CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

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BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

APRIL 13, MAY 4, and MAY 24, 2011

Serial No. J-112-4

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CONTENTS

April 13, 2011

STATEMENTS OF COMMITTEE MEMBERS

	Page
Franken, Hon. Al, a U.S. Senator from the State of Minnesota Grassley, Hon. Charles, a U.S. Senator from the State of Iowa prepared statement	$\begin{array}{c} 1 \\ 2 \\ 358 \end{array}$
PRESENTERS	
Bennet, Hon. Michael, a U.S. Senator from the State of Colorado, presenting Richard B. Jackson, Nominee to be U.S. District Judge for the District of Colorado Brown, Hon. Scott P. (of Massachusetts), a U.S. Senator from the State of Massachusetts presenting Lisa O. Monaco, Nominee to be Assistant Attorney General, National Security, U.S. Department of Justice Clyburn, Jame E., a Representative in Congress from the State of South Carolina, presenting Henry F. Floyd, Nominee to be U.S. Circuit Judge for the Fourth Circuit Cornyn, Hon. John, a U.S. Senator from the State of Texas presenting Nelva G. Ramos, Nominee to be U.S. District Judge for the Southern District of Texas Durbin, Hon. Dick, a U.S. Senator from the State of Illinois presenting Sara L. Darrow, Nominee to be U.S. District Judge for the Central District of Illinois Graham, Hon. Lindsey, a U.S. Senator from the State of Southern Carolina	8 10 11 4 5
presenting Henry F. Floyd, Nominee to be U.S. Circuit Judge for the Fourth Circuit	6
senting Nelva G. Ramos, Nominee to be U.S. District Judge for the Southern District of Texas Udall, Hon. Mark (of Colorado), a U.S. Senator from the State of Colorado presenting Richard B. Jackson, Nominee to be U.S. District Judge for the District of Colorado	3 7
STATEMENTS OF THE NOMINEES	
Darrow, Sara L., Nominee to be U.S. District Judge for the Central District of Illinois	265 267 12 17 156 157
Monaco, Lisa O., Nominee to be Assistant Attorney General, National Security Division, U.S. Department of Justice	77 83
of Texas	$\begin{array}{c} 107 \\ 108 \end{array}$

	Page
QUESTIONS AND ANSWERS	rage
Responses of Sara L. Darrow to questions submitted by Senator Grassley	314 317 320 326 340
SUBMISSION FOR THE RECORD	
Anderson, Norma V., Senator, Retired, Lakewood, Colorado, letter	343 344 346
rado, March 21, 2011, letter	347
Brennan, Daniel G., Chief of Police, City of Police Department, Wheat Ridge, Colorado, April 8, 2011, letter	348
Campbell, Benton J., former Interim U.S. Attorney, Eastern District of New York; Wan J. Kim, former Assistant Attorney General, Civil Rights Division; Jeffrey A. Taylor, former U.S. Attorney, District of Columbia; Matthew W. Fredrich, former Acting Assistant Attorney General, Criminal Division; Chuck Rosenberg, former U.S. Attorney, Eastern District of Virginia; Ronald J. Tenpas, former Assistant Attorney General, Environment and Nat-	
ural Resources Division, April 4, 2011, joint letter	$\frac{349}{350}$
Davidson, Janice B., Chief Judge, Colorado Court of Appeals, Denver, Colorado, March 29, 2011, letter	351
Donoghue Elizabeth, Chair, Committee on the Judiciary of the New York City Bar, New York, New York, June 14, 2011, letter	353
Enquist, Margie L., Judge, District Court, Golden, Colorado, March 18, 2011, letter	354
Denver, Colorado, March 23, 2011, letter	355
Gleen, Marcy G., Holland & Hart, Denver, Colorado, March 31, 2011, letter Haddon, Harold A., Haddon, Morgan and Foreman, P.C., Denver, Colorado, March 29, 2011, letter	356 364
Hulon, Willie T., April 8, 2011, letter Hutchison, Kay Bailey, a U.S. Senator from the State of Texas, prepared	366
statement	367
statementLindsay, Sue, Golden, Colorado, March 25, 2011, letter	$\frac{368}{369}$
Maxfield, John R., P.C., Holland & Hart, Denver, Colorado, March 18, 2011, letter	370
Menendez, MJ, Deputy Chief-OCDETF, U.S. Attorney, Denver Colorado, March 28, 2011, letter	372
Michaels, Jane, Holland & Hart, Denver, Colorado, March 18, 2011, letter Mink, Ted, Jefferson County Sheriff, Golden, Colorado, March 30, 2011, letter	375 376
Mudd, Philip, George Washington University, Homeland Security Policy Insti-	377
tute, Washington, DC, statement Mukasey, Michael B., Debevoise & Plimpton, LLP, New York, New York, April 5, 2011, letter	378
Munch, Christopher J., Judge, Golden, Colorado, March 17, 2011, letter	379 381
O'Donnell, Michael L., Wheeler Trigg O'Donnell LLP, Denver, Colorado, March 24, 2011, letter	382
Oeffler, Lily W., District Court Judge, Golden, Colorado, letter	383
rado, March 30, 2011, letter	384
Colorado, March 28, 2011, letter	385
March 30, 2011, letter	387

· ·	Pag
Phillips, Paul D., Holland & Hart LLP, Denver, Colorado, March 22, 2011, letter	38
Polk, Dennis B., Attorneys at Law, Holley, Albertson & Polk, PC, Golden, Colorado, March 30, 2011, letter	38
Polidori, Tuthanne, Sénior Judge, Morrison, Colorado, letter Ritter, Bill, Jr., Denver, Colorado, April 1, 2011, letter Storey, Scott W., District Attorney, Jefferson County, Colorado, March 28, 2011, letter	39 39 39
Stuart, Ryan, Magistrate, State of Colorado, Golden Colorado, March 25,	
2011, letter Suthers, John W., Attorney General, Denver Colorado, March 24, 2011, letter Terwilliger, George J., III, White & Case, Washington, DC, April 12, 2011	39 39
letter	40 40
Colorado, March 31, 2011, letter	40
Wainstein, Kenneth L., O'Melveny & Myers LLP, Washington, DC, April 11, 2011, letter	40
Walsh, John F., U.S. Attorney, District of Colorado, U.S. Department of Justice, Denver, Colorado, April 1, 2011, letter	40
Weir, Peter A., Senior Chief Deputy District Attorney, Jefferson County, Colorado, March 31, 2011, letter	40
Witt, Maureen Reidy, Holland & Hart LLP., Greenwood Village, Colorado,	41
March 21, 2011, letter	41
May 4, 2011	
STATEMENTS OF COMMITTEE MEMBERS	
Coons, Christopher A., a U.S. Senator from the State of Delaware	42 42 72 72
PRESENTERS	
Collins, Hon. Susan M., a U.S. Senator from the State of Maine presenting Nancy Torresen of Maine, Nominee to be District Judge for the District of Maine.	41
of Maine Graham, Hon. Lindsey, a U.S. Senator from the State of South Carolina presenting Timothy M. Cain, of South Carolina, Nominee to be District	
Judge for the District of South Carolina Landrieu, Hon. Mary L., a U.S. Senator from the State of Louisiana presenting Nannettee Jolivette Brown, of Louisiana, Nominee to be District	42
Judge for the Eastern District of Louisiana	41
District of Missouri	42
presenting William F. Kuntz II, of New York, Nominee to be District Judge for the Eastern District of New York	4
Snowe, Hon. Olympia J., a U.S. Senator from the State of Maine presenting Nancy Torresen of Maine, Nominee to be District Judge for the District of Maine	4
of Maine Vitter, Hon. David, a U.S. Senator from the State of Louisiana presenting Nannettee Jolivette Brown, of Louisiana, Nominee to be District Judge for the Eastern District of Louisiana	4:
STATEMENT OF THE NOMINEES	
Brown, Nannette Jolivette, of Louisiana, Nominee to be District Judge for the Eastern District of Louisiana	46

	Page
Cain, Judge Timothy M., of South Carolina, Nominee to be District Judge for the District of South Carolina	557
biographical information	558 465
Kuntz, William F., II, of New York, Nominee to be District Judge for the Eastern District of New York	514
biographical information	515 612
biographical information	613 424 426
• •	420
QUESTIONS AND ANSWERS	
Responses of Nannette Jolivette Brown to questions submitted by Senators Grassley and Klobuchar	688
and Klobuchar	694
ley and Klobuchar	698
and Klobuchar Responses of Nancy Torresen to questions submitted by Senators Grassley and Klobuchar	702 706
SUBMISSIONS FOR THE RECORD	
American Bar Association, Hill, Benjamin H., III, Chair, Washington, DC: March 3, 2011, letter February 17, 2011, letter March 10, 2011, letter December 1, 2010, letter March 3, 2011, letter Collins, Hon. Susan M., a U.S. Senator from the State of Maine, prepared statement Donoghue, Elizabeth, Chair, New York City Bar, April 27, 2011, letter	711 713 715 717 719 721 723
May 24, 2011	
STATEMENTS OF COMMITTEE MEMBERS	
Klobuchar, Hon. Amy, a U.S. Senator from the State of Minnesota	733
statement Schumer, Hon. Charles, a U.S. Senator from the State of New York, prepared statement	
PRESENTERS	
Cornyn, Hon. John, a U.S. Senator from the State of Texas presenting Marina Garcia Marmolyo, Nominee to be U.S. District Judge for the Southern	
District of Texas	730
Virgin Islands presenting Wilma Antoinette Lewis Nominee to be Judge for the District Court of the Virgin Islands	731
senting Marina Garcia Marmolejo, Nominee to be U.S. District Judge for the Southern District of Texas	735

VII	Page
STATEMENT OF THE NOMINEES	Page
Green, Michael C., Nominee to be U.S. District Judge for the Western District of New York biographical information Lewis, Wilma Antionette, Nominee to be U.S. District Court of the Virgin Islands biographical information Marmolejo, Marina Garcia, Nominee to be U.S. District Judge for the Southern District of Texas of Texas biographical information Quagliotti, Major General Marilyn A., USA (ret.), Nominee to be Deputy Director for Supply Reduction, Office of National Drug Control Policy biographical information Six, Steve, Nominee to be U.S. Circuit Judge for the Tenth Circuit biographical information	1008 865 867 1108 1114 734
QUESTIONS AND ANSWERS	
Responses of Michael C. Green to questions submitted by Senators Grassley and Coburn People v. Abdallah Cases People v. Mateo Cases People v. Owens Cases Responses of Wilma A. Lewis to questions submitted by Senator Grassley Responses of Marina Garcia Marmolejo to questions submitted by Senators Grassley and Coburn Responses of Marilyn A. Quagliotti to questions submitted by Senators Grassley and Coburn Responses of Stephen N. Six to questions submitted by Senators Grassley and Coburn	1139 1147 1269 1361 1372 1375
SUBMISSIONS FOR THE RECORD	
Christensen, Hon. Donna, a Representatives in Congress from the State of Virgin Islands Croom, Charles E., Lt. Gen (USAF, Retired), Falls Church, Virginia, letter District Attorneys Association of the State of New York, Derek P. Champagne, President, Malone, New York, April 27, 2011, letter Gilliband, Hon. Kirsten E., a U.S. Senator from the State of New York, prepared statement Keeton, Douglas W., Small Business Owner, Veteran, Silver Spring, Maryland, March 21, 2011, letter McCaffrey, Barry R., General, (Retired) U.S. Army, March 2, 2011, letter Malone, Shawn-Michael, Senator of the Virgin Islands, St. Thomas, Virgin Islands, May 23, 2011, letter Speer, Gary D., Lieutenant General, U.S. Army (Retired), Springfield, Virginia, March 21, 2011, letter	1421 1423 1425 1438 1442 1443

NOMINATIONS OF HENRY F. FLOYD, NOMINEE TO BE UNITED STATES CIRCUIT JUDGE **FOR** THE **FOURTH CIRCUIT:** LISA MONACO, NOMINEE TO BE ASSISTANT AT-TORNEY GENERAL, NATIONAL SECURITY DI-VISION: NELVA G. RAMOS, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS; RICHARD JACKSON, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DIS-TRICT **OF** COLORADO; AND, SARA DARROW, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DIS-TRICT OF ILLINOIS

WEDNESDAY, APRIL 13, 2011

U.S. SENATE, COMMITTEE ON THE JUDICIARY, Washington, DC.

The Committee met, pursuant to notice, at 3:02 p.m., Room SD-226, Dirksen Senate Office Building, Hon. Al Franken, presiding. Present: Senators Durbin, Grassley, and Graham.

OPENING STATEMENT OF HON. AL FRANKEN, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator Franken. This hearing is called to order.

Before we begin, I would like to welcome all of you here today to the Senate Judiciary Committee. Providing the President our advice and consent on judicial and executive nominations is one of the most important jobs we have as Senators, and it is a special removability for the Judician Committee and it is a special re-

sponsibility for the Judiciary Committee.

Today we will consider five nominations: Judge Henry F. Floyd, for United States Circuit Judge for the Fourth Circuit; Lisa O. Monaco, for the Assistant Attorney General of the Department of Justice's National Security Division; Judge Nelva G. Ramos, for United States District Judge for the Southern District of Texas; Judge Richard B. Jackson, for United States District Judge for the District of Colorado; Sara L. Darrow, for United States District Judge for the Central District of Illinois.

We are fortunate to have some of the nominees' home State Senators and Representatives here to introduce them, and we will turn to them shortly.

But before we do, I will turn the floor over to my friend, the Ranking Member, Senator Grassley, for his opening remarks.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator Grassley. Thank you, Mr. Chairman.

We have a nominee to be a Circuit Judge, and three to be District Court Judges. In addition, we will hear from the nominee to be Assistant Attorney General heading the National Security Division, with the Department of Justice.

I join you all, as the Chairman has, in welcoming all of you.

Ms. Lisa Monaco—Monaco, like the city of Monaco or the state of Monaco, right?

Senator Franken. I believe it is a nation.

Senator Grassley. Nation.

Senator Franken. Municipality. Senator Grassley. You do not have to convince them.

Senator Franken. It is a principality? OK. Thank you. Well, Senator Graham is a huge gambler.

[Laughter.]

Senator Grassley. The National Security Division's mission is to carry out the department's highest priority, combating terrorism and other threats to national security. The division was created in 2006 as part of the PATRIOT Act reauthorization.

Much of the reorganization creating the division was to promote a unified approach to accomplishing its mission. The structure of the division was designed to ensure greater coordination between prosecutors and law enforcement agencies, on the one hand, and the intelligence community on the other.

Tearing down this wall, enhancing investigatory tools, streamlining national security investigations, and modernizing investigative authorities to take account of new and emerging technologies are some of the reforms that we have made. And there is work to be done, as we have recently heard from the FBI Director about this. Reauthorization of the critical tools ought to be a priority of this committee.

I will continue to work with the Chairman in pursuit of a permanent extension of the Lone Wolf provisions of the roving electronic surveillance provision and of the business records provisions.

In addition, I will work to preserve and strengthen other tools available for our national security and law enforcement profes-

In addition, we are considering four judicial nominees. Henry Floyd, sitting U.S. District Judge in South Carolina, is nominated to be U.S. Circuit Judge.

We have already confirmed four of the President's nominees to the fourth circuit. This is as many as were confirmed to that Circuit during the two terms of President Bush. I would note that eight of President Bush's nominees to the Fourth Circuit were returned to the President, receiving no up or down vote by the Senate.

We are also considering three District Court nominations. They are Sara L. Darrow, to be U.S. District Judge for the Central District of Illinois; Richard B. Jackson, for the District in Colorado; and, Nelva Ramos, from the Southern District of Texas. All of these vacancies are have been declared to be judicial emergencies.

I would note that the Colorado vacancy could have been filled years ago. Gregory E. Goldberg was nominated to this seat in July of 2008 by President Bush and, as with many of these nominees

by Bush, the Committee took no action.

Mr. Chairman, I will not repeat the biographical information of our nominees. I commend each of them for their prior public service and for their willingness to continue in public service.

I ask unanimous consent that the balance of my statement be

put in the record.

Senator Franken. Without objection.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Senator Franken. Thank you, Senator Grassley.

As I said, we are fortunate to have some of these nominees' home State Senators, and I think, in the case of Judge Floyd, perhaps Representative Clyburn will be coming.

Let us start with Senator Cornyn, my good colleague from Texas,

who will introduce Judge Ramos.

Senator CORNYN. Thank you, Chairman Franken, Senator Grassley, Senator Graham. If I may withhold, and I see the senior Senator has just arrived just in time. If I could defer to her, I would appreciate it very much.

Senator Franken. Absolutely.

Senator Hutchison.

Senator HUTCHISON. We always say that I am the senior Senator, but he has the gray hair.

[Laughter.]

PRESENTATION OF NELVA G. RAMOS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS, PRESENTED BY HON. KAY BAILEY HUTCHISON, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator Hutchison. Thank you, Mr. Chairman, for having this hearing. And I am very pleased to be able to introduce our nominee, Nelva Gonzales Ramos, who has been nominated to serve as a district judge for the southern district in Corpus Christi, Texas.

She graduated summa cum laude at Texas State University in San Marcos with a degree in education. She then went on to receive her juris doctorate from my alma mater, the University of Texas Law School, where she, again, graduated with honors.

After growing up in Port Lavaca, Texas, Judge Ramos now finds herself in the very same area serving as a district court judge where she has been for the last 10 years. She began her judicial

career in 1997 as a municipal court judge in Corpus Christi.

During these years, she has been routinely recognized by the members of the Corpus Christi Bar Association as an outstanding district judge. She has gained the respect of her colleagues because of her demeanor on the bench. She is seen as fair and thoughtful and is commended by her colleagues for her skilled legal mind.

Now, I read in a newspaper interview about her, when we nominated her, the President nominated her with our consent, and one of the lawyers that appears in her court often said that when she overrules his requests, which is not infrequent, that she always explains why and he acknowledges that she is usually right. So I think that is the mark of a good judge.

I know that she has a solid understanding of the law and is well qualified, and I recommend her without reservation to the com-

mittee.

Thank you, Mr. Chairman. And I thank my junior Senator.

Senator Franken. Thank you, Senator Hutchison. Now, we will turn to Senator Cornyn, junior Senator. Senator Cornyn. Thank you, Chairman Franken.

Senator Franken, I wonder if I might ask Judge Ramos and her family to stand so we can identify them.

Senator Franken. Certainly. Welcome. Welcome to all of you.

PRESENTATION OF NELVA G. RAMOS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS, PRESENTED BY HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Thank you very much, Mr. Chairman. I saw the judge's husband and son, but I did not see her when I came in. So I am glad she is here.

Senator Franken. We will give her a chance to introduce them,

as well. That was very kind of you.

Senator CORNYN. Judge Ramos applied for this position, was screened by the Federal Judicial Evaluation Committee that Senator Hutchison and I have appointed, which is a bipartisan Committee comprised of the very lawyers in the State of Texas.

As Senator Hutchison said, we are pleased to recommend her to President Obama and am even more pleased that she is a con-

sensus nominee.

I believe her character, temperament, and her skills demonstrate that she will apply the law faithfully and why she has earned such

broad support.

Judge Ramos' nomination, as I said, enjoys broad bipartisan support. The Texas House of Representatives, for instance, recently passed a resolution describing her as, quote, "imminently qualified to serve as a Federal judge." That resolution passed unanimously by both Republicans and Democrats.

During her time on the bench, Judge Ramos has displayed a commitment to protecting some of our most vulnerable citizens. For example, she helped create the Nueces County district domestic vi-

olence court, which she has served on for the past 3 years.

She has also been very active in her community, serving on the Coastal Bend Council on Alcohol and Drug Abuse, on the board of directors for the Corpus Christi chapter of the March of Dimes, and as a mentor to students at Driscoll Middle School in Corpus Christi, Texas.

As a member of the court, Judge Ramos will be replacing Judge Hayden Head. After a lifetime of service to his country and the United States Navy during the Vietnam war and 30 years now on the Federal bench, Judge Head will be a difficult act to follow. But

I am confident Judge Ramos will rise to the occasion and continue to do us all proud.

I urge my colleagues to join Senator Hutchison and me and the people of our State in support of the nomination of Judge Nelva Gonazales Ramos.

Thank you, Mr. Chairman.

Senator Franken. Thank you, Senator Cornyn and Senator Hutchison. I know you both have very busy schedules. So thank you very much, and return to your other work.

Senator Hutchison. Thank you for your courtesy, Senator Franken.

Senator Franken. You bet. It appears that Senator Durbin has arrived. Would you introduce Ms. Darrow for us?

PRESENTATION OF SARA L. DARROW, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLINOIS, PRESENTED BY HON. RICHARD DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Thank you very much, Mr. Chairman.

I am pleased to introduce Sara Darrow, who has been nominated to serve in the District Court for the Central District of Illinois, and I thank my colleague, Senator Kirk, for also joining in this nomination.

I want to thank Chairman Leahy and Ranking Member Grassley for including Ms. Darrow in today's hearing and for giving me a chance to say a few words about her nomination.

She is currently an Assistant United States Attorney for the Illinois Central District, where she serves as the chief of the violent crimes section and works out of the Rock Island office. She has been nominated to fill the judgeship that was vacated when Judge Joe Billy McDade took senior status last year in Peoria.

Ms. Darrow was recommended to me by a bipartisan merit selection committee I established to consider judicial applications, and I was pleased to submit her name to the White House and I am glad that she is here before us today.

I am also glad that she is joined by many members of her family, including her husband, Clarence, and her six children. You will have the chance to introduce your family when you make your opening statement.

Ms. Darrow is a graduate of Marquette University and the St. Louis University School of Law. While a college student at Marquette, she interned in Washington, DC for our colleague, Senator Carl Levin.

It was on Capitol Hill where she met and began dating her husband, who was then working for Congressman Lane Evans.

Ms. Darrow began her legal career in private practice in Rock Island, where she worked for 2 years before moving over to the Henry County State's attorney's office. She served as assistant state's attorney there from 1999 to 2000, then as first assistant state's attorney from 2000 to 2003.

While serving at the state's attorney's office, she prosecuted a wide range of state felony cases and tried to verdict approximately 20 jury cases and over 100 cases before the bench. In her capacity

as first assistant, she also was responsible for supervising staff attorneys and managing the office caseload.

In 2003, Ms. Darrow became a Federal prosecutor, serving in the Rock Island office of the central district U.S. Attorney. She has investigated and prosecuted hundreds of defendants for various Federal crimes, including gang offenses, drug conspiracies, gun crimes, bank robbery, money laundering and fraud. She has written and argued numerous appeals.

Starting in 2007, Ms. Darrow has served as violent crimes chief for the U.S. attorney's office and as the office's project safe neighborhoods coordinator and organized crime drug enforcement tax

force coordinator.

I know Senator Grassley will be interested in the fact that Ms. Darrow has also served since 2003 as a special assistant U.S. attorney for the southern district of Iowa. This is an arrangement that the Illinois and Iowa U.S. attorneys' offices have worked out to coordinate their effort.

She has an amazing, impressive record in the Rock Island community, having volunteered for numerous organizations that serve children and the disadvantaged, and she also is a very proud mother.

Ms. Darrow, we are glad to have you here before us today and I look forward to enthusiastically supporting your nomination.

Senator Franken. Thank you very much, Senator Durbin.

And now I turn to my colleague from South Carolina, Senator Graham.

PRESENTATION OF HENRY F. FLOYD, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, PRESENTED BY HON. LINDSEY GRAHAM, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator Graham. Thank you, Mr. Chairman.

It is my pleasure today to introduce to the Committee Judge Henry Floyd. I have known Henry for a very long time. We practiced law together in adjacent counties. He has been a state court judge and a Federal judge for over 18 years. He was appointed to the Federal bench by President Bush.

Representative Clyburn will be coming over from the House in a bit to attest to the fact that Republicans and Democrats, independents, libertarians, vegetarians, we all have a common view of Judge Floyd and we believe he has got the best temperament of anybody in South Carolina. And that is saying a lot, because we have pretty

patient people down there.

He has a tremendous background of being a trial judge. He has been a litigator. He served in the State House. He has got a terrific background, I think, to administer justice at the Federal level. He was rated well qualified by the ABA. And I am just proud to see this day come. It has been a long time in the making, and I know, Henry, you will do a great job for the Fourth Circuit and the people of this part of the United States, and I look forward to getting you confirmed.

And it is an odd situation where I am nominating someone and putting holds on all the judges at the same time. Nothing personal to these judges. We have got a problem in Charleston that I will share with you later, and I am going to leave here to talk about

a situation with our port.

But I hope, Mr. Chairman and to my colleagues, that this will end quickly. This is a huge deal for the State of South Carolina in terms of our economic future. And all of these judges reflect the best in America when it comes to the law, and Henry Floyd is a judge's judge, a person every lawyer who has been before has nothing but praise. And I know you will administer justice fairly at the Circuit Court level, and I very much appreciate President Obama nominating you. This is something he did not have to do, but he chose to do.

And when it comes to Representative Clyburn coming over from the House, it speaks volumes about you, Henry, as a person. So thank you very much.

Senator Franken. Thank you, Senator, and thanks for your patience, and I know you have to go. And we will hope that Representative Clyburn does make it.

But in the meantime, we will go to Senators Udall and Bennet to introduce Judge Jackson.

First, Senator Udall.

PRESENTATION OF RICHARD B. JACKSON, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLORADO, PRESENTED BY HON. MARK UDALL, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator UDALL. Thank you, Mr. Chairman, Senator Grassley, Senator Durbin. It is a treat to be here today to introduce a nominee for the Federal District Court bench in the District of Colorado, Judge Brooke Jackson.

As you mentioned, I am joined here by my colleague, Senator

Bennet.

My firm belief is that Judge Jackson is exceptionally well qualified to fill this judicial vacancy, and I would urge his confirmation.

The President, as was mentioned, nominated Judge Jackson to fill a vacant seat on the Federal district court of Colorado, where a judicial emergency, Senator Grassley pointed this out, has existed for several years due to a very heavy caseload.

Based on Judge Jackson's track record of judicial service in Colorado, I have no doubt that he will serve with distinction. Quite simply, he has the right judicial temperament, the depth of experience, and a firm insistence on adjudicating all cases in an impartial manner, consistent with the law, qualities that I know we all look for in a Federal judge.

Judge Jackson is originally from Montana. He excelled academically and he graduated magma cum laude from Dartmouth College and received his law degree cum laude from Harvard Law School.

When he graduated, he heard the siren call of the west, Mr. Chairman, and he had the good sense and good fortune to turn his

western roots to practice law in Colorado.

He is currently a judge in the first judicial district of Colorado, where he has served for nearly 13 years. He has served as the chief judge for the last 8. During his time on the bench, Judge Jackson has presided over hundreds of trials and sentenced nearly 5,000 criminal defendants.

Prior to his service on the bench, Judge Jackson spent 26 years with the Denver-based law firm of Holland & Hart. During his time in private practice, Judge Jackson juggled a very busy schedule to also serve as a part-time pro bono town prosecutor on Bow Mar, Colorado.

Mr. Chairman, Senator Bennet and I enlisted a bipartisan judicial selection advisory panel to help us make recommendations to the President for court vacancies in Colorado. Former Colorado Supreme Court Justice Rebecca Kourlis, a Republican, co-chaired the advisory committee, with Hal Haddon, a prominent Denver lawyer and Democrat.

When the process began, we had two vacancies on the district court and our advisory panel worked tirelessly to interview and put forward the most qualified candidates.

It was clear then and it is even clearer now that Judge Jackson deserves the President's nomination. I was not surprised when I learned that the American Bar Association unanimously rated Judge Jackson as well qualified, which is their highest rating, to

serve as a Federal district judge.

Since Judge Jackson has been nominated, there has been an outpouring of support from across the legal community and even across party lines. He enjoys broad support from respected Republicans, such as former U.S. Senate candidate Pete Coors, Colorado Attorney General John Suthers, Scott Storey, the district attorney of his own judicial district, and many others. He also has the support of many members of my party, including former Governor Bill Ritter, current U.S. Attorney John Walsh, and Congressman Ed Perlmutter of the seventh district, where Judge Jackson serves.

Mr. Chairman, even district attorneys, police chiefs, sheriffs from across his district have come out in support of his nomination, and, Mr. Chairman, I would like to submit all the letters we have re-

ceived thus far for the record.

Senator Franken. Absolutely, without objection. [The letters appear as a submission for the record.]

Senator UDALL. It is over 40 letters of the people I mentioned and many others.

The nomination of Judge Jackson is one of those rare, at least I think very notable times when Democrats and Republicans are all speaking with one voice in support of Judge Jackson.

I want to thank you, Mr. Chairman, and members of the Committee for affording me time this afternoon to introduce Judge Jackson to all of you.

Thank you.

Senator Franken. Thank you, Senator Udall. And I will go to my colleague, Senator Bennet.

PRESENTATION OF RICHARD B. JACKSON, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLORADO, PRESENTED BY HON. MICHAEL F. BENNET, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator Bennet. Thank you, Mr. Chairman. By the way, it takes longer in some of our other committees to get to where you are. So congratulations.

Senator Franken. Well deserved.

[Laughter.]

Senator Bennet. That is what I believe. You certainly look the part.

And Senator Udall is right, we speak with one voice today. Senator Durbin looks a little unsure.

[Laughter.]

Senator Bennet. I want to thank you and the members of the Committee for holding this hearing on Judge Brooke Jackson to serve on our United States District Court for the District of Colorado.

I would also like to welcome the Jackson family here today.

I am proud to be here today with Mark Udall to introduce Judge Jackson. His nomination, as Senator Udall said, is the product of a thorough review by a bipartisan judicial nomination commission in our state.

I support Judge Jackson's nomination and the work of our confirmation and urge confirmation of this impressively experienced candidate to the Federal bench.

Judge Jackson is a seasoned jurist. He has extensive knowledge of a wide variety of types of cases important to the people of the State of Colorado. His mean years overseeing thousands of cases in Colorado's courts have prepared him now to serve our Nation on the Federal bench.

Since his appointment to the state district court bench in 1998, he has dutifully served Colorado. Because of his judicial temperament and skill on the bench, Judge Jackson was elevated to chief judge of the first judicial district in 2003.

As chief judge, he is not only responsible for managing the entire judicial team made up of 13 district court judges, eight county court judges, eight magistrates, and a staff of 300, Judge Jackson manages a caseload of 200 felonies, 200 civil cases, and 50 domestic cases

He has had some of the toughest cases come before him and, by all accounts, from Republicans, such as our current Colorado Attorney General, John Suthers, to Democrats, like our former Governor, Bill Ritter, Judge Jackson has broad support.

I know Senator Udall plans to ask the committee, or he already did, to add a number of letters of support from prominent law enforcement officials and others in our state. These letters run the gamut, I assure you, Mr. Chairman, across Colorado's legal and law enforcement community.

Prior to his appointment to the state bench, Judge Jackson worked in private practice for 26 years as a civil litigator. He has also served as a prosecutor. His breadth of public and private sector legal experience sets him apart. That is why Senator Udall observed the American Bar Association rates him unanimously well qualified. It is also why the leaders in our state, from Pete Coors to John Walsh, have joined in support of Judge Jackson's nomination

Given the case backlogs in our judicial system, it is especially important that we bring on someone with Judge Jackson's breadth of experience to help make sure all Coloradans have access to our courts. The Federal court system needs to fill this vacancy as soon as practicable.

I am more than happy to provide the Committee with any further materials or insight you may need as you process Judge Jackson's nomination.

I would like to thank, again, the Committee for holding this hearing today and join the array of Colorado voices urging Judge Jackson's confirmation.

Thank you, Mr. Chairman, and I thank my other colleagues here for their forbearance.

Senator Franken. Thank you, gentlemen.

Before we turn to the distinguished Senator from Massachusetts, without objection, I will add to the record an enthusiastic statement of support from his colleague, Senator Kerry, for the nomination of Lisa Monaco.

And he writes the following: "From her time as a Federal criminal prosecutor, where she took on Enron, to her work in the FBI director's office and the difficult and decisive days following the 9/11 attacks, Lisa has doggedly pursued justice and dedicated herself to strengthening the safety and security of our Nation. I am confident that Lisa will do a superb job in protecting our country."

And without objection, I will include the entire letter in the record.

[The prepared statement of Senator Kerry appears as a submission for the record.]

Senator Franken. We turn now to my distinguished colleague from Massachusetts, Senator Brown, to introduce Ms. Monaco.

PRESENTATION OF LISA O. MONACO, NOMINEE TO BE ASSIST-ANT ATTORNEY GENERAL, NATIONAL SECURITY DIVISION, U.S. DEPARTMENT OF JUSTICE BY HON. SCOTT P. BROWN, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator Brown of Massachusetts. Thank you, Mr. Chairman and Ranking Member and members of the committee. I just want to say thank you for allowing me to speak and, obviously, to appear here today to introduce Lisa Monaco, a nominee to be Assistant Attorney General for the National Security Division. And I offer my congratulations, as I have to her and her family.

She has been a dedicated public servant for many years, and it

is my honor to introduce her at this hearing.

I had the pleasure of speaking with Ms. Monaco yesterday in my office at length and very much enjoyed our conversation, and I found that she conveyed strong self-confidence and a seriousness of purpose.

She has deep roots in Massachusetts, having been born in Massachusetts and raised in Newton, and attended Newton public schools before enrolling at Harvard. Her parents still live in Newton. Her twin brother and his family live in Belmont. Her eldest brother lives in Boston. And I'm sure—I know that the family is very proud of her today.

When I met with her yesterday, we had a frank conversation about the important role that the National Security Division plays in keeping our Nation safe and secure, and I believe she understands the incredible importance of the office for which she is being

nominated.

Former Attorney General Michael Mukasey wrote to this Committee about her experience and stated that, "has both sound judgment and a keen understanding national security law".

I am pleased to learn that her background reflects an understanding of the national security threats that we face, as well as the operation of the Justice Department.

Currently, she is the principal associate deputy attorney general and is a member of the senior management team for the deputy at-

torney general and the attorney general.

She serves as the deputy attorney general's primary advisor on a broad range of criminal, law enforcement, national security, and civil matters, and assists the deputy attorney general in the overall management and oversight of the operations of the Justice Department.

From 2006 to 2008, she served as chief of staff to the director of the FBI and she is a former prosecutor who served, as you noted, Mr. Chairman—as Senator Kerry noted—on the Enron task force.

She was among a small group of prosecutors drawn from around the country and charged with investigating criminal violations in connection with the collapse of Enron in 2001.

She received the attorney general's award for exceptional service, the Department of Justice's highest award, for her work as a prosecutor on that task force.

In closing, I look forward to a thorough and fair examination of her record. The critical work of the National Security Division demands no less.

So thank you, Mr. Chairman and Ranking Member and Senator Durbin.

Senator Franken. Thank you, Senator Brown. Thanks for your

patience and arriving so early.

We would like to welcome, from the House of Representatives, to speak on behalf of Judge Floyd and speak to the bipartisan support for Judge Floyd, our colleague, Representative Clyburn. Thank you for joining us.

PRESENTATION OF HENRY F. FLOYD, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, PRSENTED BY HON. JAMES E. CLYBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Representative CLYBURN. Thank you very much, Mr. Chairman. Mr. Chairman, Senator Grassley, Senator Durbin, I want to thank you all so much for allowing me to appear here today on behalf of a long-time friend, Judge Floyd.

I was thinking, as I was searching this junk on my desk trying to find the remarks that were prepared for me today, what will I say without them. Well, I am without them. So I am going to tell

you what I know about Judge Floyd.

I first met Judge Floyd when I was running a state agency in South Carolina, an agency to which I was appointed by then Governor John West, an agency that was created to respond to the times within which we lived coming out of the 1960s and the early 1970s.

As you might imagine, Mr. Chairman, in those days, things were quite contentious in South Carolina and in the early days of that

agency, I was not the first director of it, it got in significant difficulty and the legislature was moving to defund the agency and eliminate it. And I was asked by Governor West to go to that agency and try to see what we could do to turn it around.

I started looking for legislators that I could sit down with and could get to understand exactly what it was that we were trying

to do in order to continue to move our state forward.

In that search, I came upon Henry Floyd, a young legislator from Pickens County, and when I looked into his background, I was able, through those meetings, to forgive him because of his northern roots, having been born in North Carolina. His parents moved to Pickens County when he was a very young boy.

to Pickens County when he was a very young boy.

He, I noticed, had graduated from Wofford College in Spartanburg, a United Methodist affiliated school, whose board of

trustees I was one time a member of.

I know that we all talk about judges being prepared, well prepared for their work, and I think that all of you have his back-

ground before you and I need not go into that.

What may not be shown on that paper that you have is the temperament of Henry Floyd. I can tell you without question that no one has ever been considered for a judgeship, no one has ever served in a judgeship that has demonstrated the kind of judicial temperament that you will find in Judge Henry Floyd. And I am so pleased to be here today to be a part of hopefully elevating him to the Fourth Circuit Court of Appeals.

I do believe that he would make not just all South Carolinians,

but all Americans proud.

So thank you so much for allowing me to be here on his behalf today, and I wish him Godspeed, and each one of you the same throughout your deliberations.

Thank you so much.

Senator Franken. Thank you, Representative Clyburn, for join-

ing us here in the Senate.

And with that, I will introduce Judge Floyd and swear him in. So if, Judge Floyd, you would come forward, after that very eloquent introduction. You can remain standing.

[Nominee sworn.]

Senator Franken. Thank you. You may be seated.

Judge Floyd, as is our tradition, please feel free to introduce any members of your family or friends that are here with you today.

STATEMENT OF HON. HENRY F. FLOYD, NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

Judge FLOYD. Thank you, Mr. Chairman.

I have with me my wife, Dr. Libba Floyd; my good friend, Scott Dover; my mother, Margaret Floyd; my daughter, Betts Copenhaver, who is the mother of our two grandchildren; and, then, the president-elect of the South Carolina Bar, Marvin Quattlebaum, appeared here today. I didn't know he was coming, but he's in the audience today, as well.

Senator Franken. Welcome to all of you and congratulations to all of you.

Judge Floyd, you are in the unique position of having served as both a judge and as an elected official in the South Carolina State Legislature, a special position—I am sure someone else has done that before.

Should you be confirmed, how do you think that your time serving in the legislature will help you interpret the laws that we write?

Judge FLOYD. Thank you, Mr. Chairman, for that question, and Senator Grassley.

I was elected to the legislature when I was in law school. And so I got to spend a lot of time working with the Judiciary Committee, which, at that time, drafted most of the legislation that was considered by the House, except for budget.

And so I got a real good lesson in how to put statutes together, how to interpret them, what the pitfalls could be. So I think my legislative experience would greatly assist me in the area of statutory construction and interpretation.

Senator Franken. You currently are a district court judge. How do you think your job will change if you are confirmed for a position in the court of appeals?

Judge Floyd. Well, I think—Senator, thank you for that question. I think that we still do a lot of writing and research at the district court level, particularly on the civil side. So it's nothing new to me in that regard.

I would tell you that I've also set a designation at the Courth Circuit some 50 to 60 times. So I'm familiar with the process and how it works, and I think the transition would be very easy for me.

Senator Franken. You were at the center of some very important national security cases a few years ago; for instance, the *Padilla* and *Almawri* cases. Can you ell us about those cases and your role in them?

Judge FLOYD. Thank you, Senator. The *Padilla* case came to me by way of a Supreme Court opinion that said that the case had to be tried in the district of South Carolina. And so he was in-house at the brig in South Carolina.

So I got the case and the issue was whether or not the President had the right to detain an American citizen who was arrested on American soil. I ruled that he did not have that authority. And then the Fourth Circuit unanimously reversed me on that case.

And then a few days before the cert briefs were due in the Supreme Court, the government changed its mind and decided to charge Jose Padilla as a citizen and they tried him in Florida.

The *Almawri* case is a little different set of facts. He likewise was in the brig at Charleston. He came into the country the night before 9/11. The evidence in the case led me to conclude that under those facts and circumstances, that the President had a right to detain Almawri because there was a sudden—there was somewhat of a sudden emergency had he gone on about what he had plotted to do.

That went up on appeal and, again, I got reversed by the Fourth Circuit. Again, just days before the Supreme Court was to see the briefs on the court, again, the government changed its mind and charged him as a citizen and—civilian—and tried him, I think, in Illinois, Senator Durbin.

The order in that case, my order, is still a valid order in that the Supreme Court has vacated the Fourth Circuit's opinion. So the right of detention is still there.

Senator Franken. So the Supreme Court never ruled on the

issues in that case then.

Judge FLOYD. They never got to it, initially on jurisdictional grounds.

Senator Franken. I understand that you were one of the first judges in the country to address the admissibility of—and I hope I pronounce this right—mitochondrial?

Judge FLOYD. Mitochondrial DNA, Senator?

Senator Franken. Yes.

Judge FLOYD. Yes, sir.

Senator Franken. Yes. DNA is the pronunciation I knew I could get right. And you ruled that such evidence was admissible, which the South Carolina Supreme Court affirmed. I have worked hard here in the Senate to make sure that DNA evidence is collected and tested in a timely way so that justice can be served for victims of crime.

Can you tell me a little bit about your experiences with DNA evidence in your courtroom?

Judge FLOYD. Thank you, Senator, for that question. Specifically on mitochondrial or DNA in general? In general?

Senator Franken. In general.

Judge FLOYD. All right. Well mitochondrial DNA is derived from the mother of the person. It can be a very, very, very small sample.

In this case, it was a murder case, with the death penalty pending. The FBI came in and testified. It was only the second time in the United States that mitochondrial DNA evidence was admitted, and we went through a long process, something akin to the Daubert analysis in Federal court. But ultimately, it was admitted.

DNA evidence is quite frequently used, particularly in the state court, because there are so many criminal cases tried there. I have had—I have not had a bad experience with it and we've been—and we've had a good chain of custody and all that kind of stuff. So it's a very valuable tool for both sides.

Senator Franken. Thank you, Judge.

And I would turn to the Ranking Member.

Senator GRASSLEY. I do not know whether I need to ask you any questions. If you have got the two Senators from South Carolina on your side, you have got a couple tough cookies backing you.

But let me do my job, because we want to make sure that people that interpret the law as opposed to make the law get on our courts.

And I was going to ask you about *Padilla*, so I will not go into that anymore. But you were a state court judge for 11 years, having been a District Court Judge now for 7 years, presided over hundreds of cases and even sat as designation on the Fourth Circuit.

I am going to use, for my first question, Professor Liu, who was before our Committee a couple—well, maybe a month ago now for a hearing, and his nomination is on the Senate floor.

But as a professor, he wrote at the moment of decision should determine whether a society's, "collective values on a given issue," have converged to a degree that they could be persuasively crystallized and absorbed into legal doctrine.

What I am asking is for you to answer, is it appropriate for a judge to consider, "our collective values on a given issue," when interpreting the Constitution, a Federal statute, or deciding case or controversy?

Judge FLOYD. Thank you for the question, Senator Grassley. I am not familiar with the nominee or any of his writings, and I really don't know what content that particular quotation came from. So I'm really not in a position to evaluate that.

Senator GRASSLEY. All right. If confirmed as a Circuit Judge, what weight would you give to public values and social understandings in deciding cases, analyzing Federal statutes, or interpreting the Constitution?

Judge FLOYD. Thank you, sir, for that question.

My position has always been, as a trial judge, both at the state and Federal level, is that, as simple as it sounds, I try to determine what the facts are and do that fairly and impartially and to those facts, I apply the law, as I understand it to be.

There is a lot of precedent out there and I understand that and do follow precedent, when it exists. So that may seem a little nar-

row, but that's the way that I do things.

Senator GRASSLEY. Do you think the Constitution should be interpreted in ways that adapt its principles and its text to the challenges and conditions of our society? And if you thought so, how would you go about accomplishing that?

Judge FLOYD. Thank you again for that question. I don't believe that I would go about interpreting in that way, but I understand

your question.

Senator GRASSLEY. I think you have answered my question. I would like you to think about the most difficult case you have had to decide as a Federal judge. In deciding that case, did you resort to things that you might call your own personal values, your core concerns, broader perspectives of how the world might work or the depth and breadth of your empathy? And those are words that might sound familiar to you, because they come from the empathy standard discussed by President Obama on several occasions.

Judge FLOYD. So you want me to talk about the concept of empathy.

Senator GRASSLEY. Well, how you would use that, whether you look at cases that way.

Judge FLOYD. No. Again, the way I answered your other question, you look at the facts, you determine them fairly and impartially, and you apply the law, and that's essentially what I do.

Senator GRASSLEY. Thank you very much.

Senator Franken. Senator Durbin.

Senator DURBIN. Thank you very much, Judge Floyd, for being here. And like my colleagues, I am impressed by the fact that you had the support of both Republican Senators and my close friend, Congressman Clyburn, speaks well of your background and balance and reputation as a jurist.

You have been involved in a number of things which have been questioned here. There is one I would like to ask about. We had a former colleague from the Commonwealth of Pennsylvania, Arlen Specter, and his last request of us as he left this Judiciary Committee, which he once chaired, was that we take up that issue which he addressed with great passion of televising court proceedings.

And it turns out that in your background, you were a state court judge and presided over the case of *State* v. *Beckham*, a prominent murder case that resulted in a life sentence for the defendant. The entire 3-week trial was televised live in Court TV.

So, Judge Floyd, what is your view on televising court proceedings and whether they would be appropriate in Federal court?

Judge FLOYD. Well, let me answer this way, from the state court experience. The Supreme Court gave us discretion to have proceedings televised. I personally, as a state court judge, did not have any problems with Court TV, for example, being in the courtroom.

Everything went smoothly. And as you've noted, it was a 3-week trial. It wasn't the only trial where I had TV or cameras in. But it didn't bother me in state court.

But to answer your question, at the Federal level, that's really not my call. I think that's up to the Supreme Court or perhaps Congress.

Senator DURBIN. What was your observation on its impact on witnesses or even the conduct of counsel?

Judge FLOYD. Senator, with me personally, I run a pretty tight courtroom and I have not had problems. But I am aware that other judges have had problems with counsel playing for the cameras.

Lots of times, the public can be misled by a snippet on the news and get the wrong idea about what's going on in the case. So that's one of the pitfalls of having cameras in the courtroom. But, again, I had a good experience. I never got burned by it.

Senator Durbin. Thanks very much, Judge Floyd.

Thank you, Mr. Chairman.

Senator Franken. Thank you. And thank you, Judge Floyd. Thank you for your testimony.

[The biographical information of Henry F. Floyd follows.]

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

Henry Franklin Floyd

2. Position: State the position for which you have been nominated.

United States Circuit Judge for the Fourth Circuit

3. Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States District Court Donald S. Russell Federal Building 201 Magnolia Street Spartanburg, South Carolina 29306

4. Birthplace: State year and place of birth.

1947; Brevard, North Carolina

 Education: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1970 – 1973, University of South Carolina School of Law; J.D., 1973 1966 – 1970, Wofford College; B.A., 1970

6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2003 – Present United States District Court for the District of South Carolina 201 Magnolia Street Spartanburg, South Carolina 29306 United States District Judge 1992 – 2003 South Carolina Court Administration 1015 Sumter Street Columbia, South Carolina 29201 South Carolina Circuit Court Judge

1986 – 1992
Pickens County
222 McDaniel Avenue
Pickens, South Carolina 29671
County Attorney (simultaneously with my partnership at the law firm)

1978 – 1992 Acker, Acker, Floyd & Welmaker, P.A. Attorneys at Law 603 South Lewis Street Pickens, South Carolina 29671 Partner

1972 – 1978 South Carolina House of Representatives State House Columbia, South Carolina 29211 Member, House of Representatives

1974 – 1977 Floyd & Welmaker, P.A. Attorneys at Law 208 Garvin Street Pickens, South Carolina 29671 Partner

1973 – 1974 Henry F. Floyd Attorney at Law 208 Garvin Street Pickens, South Carolina 29671 Solo Practitioner

1973 United States Army Fort Benjamin Harrison Indianapolis, Indiana First Lieutenant 1970 – 1971 Lt. Governor Earle E. Morris P.O. Box 142 Columbia, South Carolina 29202 Administrative Assistant

Other Affiliations (uncompensated)

1994 – Present South Carolina Judicial Invitational Golf Tournament P.O. Box 136 Columbia, South Carolina 29202 President (1995 – 2006) Chairman of the Board (2007 – present)

2004 – 2007 Grace United Methodist Church 309 East Cedar Rock Pickens, South Carolina 29671 Administrative Board Member

1989 – 1992 Rocky Bottom Camp for the Blind 123 Hancock Road Sunset, South Carolina 29685 Board Member

1980 – 1992 Pickens County Public Defender Corporation c/o P. O. Box 10264 Greenville, South Carolina 29603 Board Member

1978 – 1990 South Carolina Forestry Commission 5500 Broad River Road Columbia, South Carolina 29212 Commissioner

Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

In September 1966, I joined the Reserve Officers Training Corps at Wofford College. I was commissioned Second Lieutenant in the United States Army in May 1970. I was in

reserve status from 1970 to 1973, except for a three month period during which I was in active service at Fort Benjamin Harrison in Indianapolis, Indiana (August 1973 – November 1973). I went on inactive reserve status between November 1973 and July 1979, when I received an honorable discharge. My highest rank was First Lieutenant. In addition, I registered for selective service.

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Eagle Scout – Boy Scouts of America (1962) Member, Blue Key National Honor Society (1969) Scabbard & Blade National Military Honor Society (1969) Who's Who in American Colleges & Universities (1969)

 Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

State Trial Judges Conference

American Judicature Society

Board of Commissioners on Grievances and Discipline, 1990 - 1992

Federal Bar Association

Federal Judges Association

Fourth Circuit Judicial Conference

Greenville County Bar Association

Judicial Resources Committee for the Judicial Conference of the United States

Pickens County Bar Association

South Carolina Advisory Committee for Drug Offenses & Common Law Crimes

South Carolina Advisory Committee on Standards of Judicial Conduct, 1993 - 1999

South Carolina Association of Circuit Judges President, 1995 – 1997

South Carolina Bar Association

South Carolina Bar Association Pro Bono Program, 1991 - 1992

South Carolina Circuit Judges Advisory Committee

South Carolina Commission on Judicial Conduct, 1999 - 2000

South Carolina Judicial Conference

South Carolina Trial Lawyers Association (now known as South Carolina Association for Justice)

Spartanburg County Bar Association

Upstate South Carolina American Inn of Court

10. Bar and Court Admission:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

South Carolina, 1973

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1980 United States Court of Appeals for the Fourth Circuit, 1974 United States District Court for the District of South Carolina, 1974 South Carolina Supreme Court, 1973

There have been no lapses in membership.

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

The Arbours at Reba-Dale Homeowners Association (2010 – present)
The Commerce Club (1984 – present)
First National Bank of Pickens County Advisory Board (1984 – 1992)
Grace United Methodist Church Administrative Board (2004 – 2007)
Pi Kappa Alpha Fraternity, Alumnus member
Pickens Country Club (1973 – 2008)
Pickens County Public Defender Corporation (1980 – 1982)
Board Member
Pickens Investment Club (1978 – 1992)
Pumpkintown Associates Investment Group (1982 – 1992)
Rocky Bottom Camp for the Blind (1989 – 1992)
Board Member
South Carolina Forestry Commission (1978 – 1990)
Commissioner

South Carolina Judicial Invitational Golf Tournament (1994 – present)
President (1995 – 2006)
Chairman of the Board (2007 – present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I am an alumnus member of the Pi Kappa Alpha social fraternity at Wofford College, which is for men only.

To the best of my knowledge, no other organization listed above currently discriminates, or previously discriminated, on the basis of race, sex, religion, or national origin.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

This list represents the published material I have identified through searches of my files and Internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

The Law of Automobile Insurance in South Carolina - Sixth Edition, South Carolina Bar (2009), editorial board. Copy supplied.

The South Carolina Law of Torts - Third Edition, South Carolina Bar (2004), contributed substantially to Chapter 8, Damages: Judicial Supervision of the Amount of Verdicts. Copy supplied.

The Criminal Trial Benchbook for New Circuit Judges, South Carolina Court Administration, 2000. Copy supplied.

The Pickens Sentinel, Legislative Report, at varying intervals from 1973 – 1976. During my tenure in the House of Representatives, I published status reports to my constituents regarding legislative happenings. Copy supplied.

Letter to the Editor, OLD GOLD & BLACK, Nov. 8, 1968, at 2. The *Old Gold & Black* is the college newspaper for Wofford College. Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Between October 1993 and November 1999, as a board member for the South Carolina Supreme Court Advisory Committee on Standards of Judicial Conduct, I contributed to opinions released in response to conduct questions from other judges. I have supplied all opinions to which I contributed.

Between 1973 and 1978, as a state representative, I sponsored and co-sponsored legislation. A copy of the list of legislation 1 have been able to obtain is supplied.

During my time at Wofford College, I was a member of the Blue Key National Honor Society and served as the SGA Treasurer. In that capacity, I participated in preparing a report that called for the creation of a Campus Union. I do not have a copy of the report. Articles about the report and my involvement, however, can be found in the March 6, 1970, and April 10, 1970, issues of the Wofford College newspaper, the Old Gold & Black. Copies of those articles are supplied. Wofford College's address is 429 North Church Street, Spartanburg, South Carolina 29303.

In addition, between 1978 and 1990, during my service as a Commissioner on the South Carolina Forestry Commission, the Commission published an Annual Report. I do not recall personally preparing or contributing to these reports.

I cannot recall and have been unable to identify any other reports, memoranda, or policy statements that I prepared or contributed in preparing.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

On July 30, 2003, I testified before the United States Senate Judiciary Committee prior to my confirmation as a United States District Judge. I was asked one question relating to my work on the Board of Commissioners on Grievances and Discipline and how it helped me as a judge. Copy supplied.

In September 2000, I wrote a letter to the County Council about courthouse security. While I have been unable to obtain a copy of the letter, press coverage with details of my letter is supplied.

In 1998, I testified before the Judicial Merit Selection Commission, chaired by Representative F. Gregory Delleney, Jr., prior to my reelection as a state circuit court judge. My testimony included answering questions regarding the law on various ethical issues, various matters of protocol in my chambers, my views on judicial activism and judicial temperament, and my involvement in the legal community. Copy supplied.

In 1992, I testified before the South Carolina General Assembly's Judicial Screening Committee, chaired by Thomas Pope III, prior to my election as a state circuit court judge. My testimony included answering questions relating to my transition from being a trial lawyer to a judge, the ideal qualities of a circuit court judge, and my prior practice. Copy supplied.

In 1975, I participated with three other state legislators in a public debate regarding the enabling statute for home rule in South Carolina. I advocated for the enactment of county home rule with minimal interference from the state legislature. The debate was broadcast on South Carolina's PBS station, ETV. I have no notes, transcripts or recordings of this debate and have been unable to find any other record of the event.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The list below identifies speeches or talks I have identified from my files, a search of Internet databases and my personal recollection. Despite my searches, there may be other speeches or talks I have been unable to identify, locate, or recall.

March 9, 2010: South Carolina Bar Association's Bridge the Gap course for recent bar members, University of South Carolina School of Law. I participated on a panel discussing tips for succeeding in federal court. I have no notes, transcript or recording. The address of the Bar Association is 950 Taylor Street, Columbia, South Carolina 29201.

November 7, 2009: South Carolina Defense Trial Attorneys' Association Annual Meeting, Savannah, Georgia. I participated on a panel of federal judges

discussing federal practice and procedure. I have no notes, transcript or recording. The address of the Association is 1 Windsor Cove, Suite 305, Columbia, South Carolina 29223.

September 17, 2009: South Carolina Federal Bar Association CLE, Greenville, South Carolina. I participated on a panel discussing ethics in the legal practice. I have no notes, transcript or recording. The address of the Association is P.O. Box 1402, Columbia, South Carolina 29202.

May 16, 2009: South Carolina Court Reporters Association Convention, Greenville, South Carolina. I spoke about rules for living and some of the differences in federal and state courts in South Carolina. I have no notes, transcript or recording. The address of the Association is 721 Cypress Point Drive, Chappells, South Carolina 29037.

November 13-16, 2008: South Carolina Defense Trial Attorneys' Association Annual Meeting, Amelia Island, Florida. I spoke on a panel to give my perspective on serving as a federal judge and to discuss how judges can avoid making legal mistakes. I also served on a panel CLE program on lawyer civility. I have no notes, transcript or recording. Press coverage supplied. The address of the Association is 1 Windsor Cove, Suite 305, Columbia, South Carolina 29223.

June 24, 2008: Investiture for Circuit Public Defender of the Seventh Circuit, Spartanburg, South Carolina. I gave remarks at the ceremony for Clay Allen as he was sworn in as the new Public Defender. A copy of my notes is supplied.

September 26, 2007 and November 9, 2007: Wofford College Judicial Forum and University of South Carolina School of Law class reunion. Terrorism and Civil Liberties was the broad topic of this talk. A copy of my notes is supplied.

February 28, 2007: Charleston School of Law, Charleston, South Carolina. I gave a talk as a part of the school's Professionalism Series. A copy of my notes is supplied.

November 10, 2006: South Carolina Defense Trial Attorneys' Association annual meeting, Amelia Island, Florida. I participated on a panel of judges entitled "Upcoming changes to Electronic Discovery – Tips from the Federal Judiciary." I have no notes, transcript or recording. The address of the Association is 1 Windsor Cove, Suite 305, Columbia, South Carolina 29223.

October 27, 2006: South Carolina Bar CLE, Columbia, South Carolina. Annual Tort Law Seminar. I presented remarks with regard to additur and remittitur in the federal courts. Remarks supplied.

January 28, 2006: South Carolina Bar Convention, Charleston, South Carolina. 1 participated on a panel dealing with the topic of Tort Reform in South Carolina.

I have no notes, transcript or recording. The address of the Bar Association is 950 Taylor Street, Columbia, South Carolina 29201.

November 11, 2005: South Carolina Bar CLE, Columbia, South Carolina. *Masters in Trial*. Participated on a panel discussion about good trial techniques. I have no notes, transcript or recording. The address of the Bar Association is 950 Taylor Street, Columbia, South Carolina 29201.

October 28, 2005: U.S. Probation Office for the District of South Carolina, Greenville, South Carolina. Annual seminar about U.S. Sentencing Guidelines. I have no notes, transcript or recording. The address for the Probation Office is 617 East McBee Avenue, Greenville, South Carolina 29601.

September 9, 2005: Fourth Annual Federal Bar Association CLE, Columbia, South Carolina. I participated on a panel about developments in the federal practice in South Carolina. I have no notes, transcript or recording. The address of the Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

June 27, 2005: Fourth Circuit Judicial Conference, Hot Springs, Virginia. I gave a brief talk about my journey to becoming a United States District Judge. A copy of my notes is supplied.

April 29, 2005: Spartanburg County Bar Association Law Day event. I discussed the Seventh Amendment right to trial by a jury. Remarks supplied.

April 8, 2005: Emory University School of Law. I spoke to a "Law and Terrorism" class and took questions. My remarks were limited to my decisions in *Padilla* and *Al-Marri*. I have no notes, transcript or recording. The address of the law school is Gambrell Hall, 1301 Clifton Road, Atlanta, Georgia 30322.

February 2005: South Carolina Bar CLE Division. I recorded a video course on the differences in state and federal courts in South Carolina. My notes and the video recording are supplied.

September 24, 2004: Wofford and the Law, conference held at Wofford College, Spartanburg, South Carolina. I participated on a panel discussion of a variety of topics, including punitive damages in South Carolina federal courts after State Farm v. Campbell. A copy of my outline is supplied.

May 6, 2004: South Carolina Circuit Judges Annual Conference, Columbia, South Carolina. I gave a talk on the basics of class actions. My outline notes are supplied.

March 26, 2004: South Carolina Bar Vacation CLE, Pinehurst, North Carolina. Ethics – The Oath is Sacred. My outline is supplied. March 9, 2004 and May 18, 2004: South Carolina Bar Association's Bridge the Gap course for new bar members. I participated in a panel discussion on federal practice in South Carolina at the University of South Carolina School of Law, Columbia, South Carolina. I have no notes, transcript or recording. The address of the Bar Association is 950 Taylor Street, Columbia, South Carolina 29201.

February 27, 2004: South Carolina Circuit Judge G. Edward Welmaker Investiture ceremony, Pickens, South Carolina. I delivered remarks at the ceremony. A copy of my remarks is supplied.

January 26, 2004: South Carolina Bar Convention, Charleston, South Carolina, *Breakfast Ethics - The Oath is Sacred.* A United States Magistrate Judge and I discussed the topic. The outline I used was the same as that supplied for the March 26, 2004 event.

December 1, 2003: my investiture ceremony as a United States District Judge, given at the Donald Russell Federal Building, Spartanburg, South Carolina. A copy of the transcript is supplied.

May 1, 2003: Law Day Speech, Greenville County Bar Law Day Luncheon. I discussed the history of Law Day in the United States. A copy of my notes is supplied.

September 30, 2002: Differentiated Case Management System, South Carolina Court Administration, South Carolina Solicitors' Conference and Public Defenders' Conference, Myrtle Beach, South Carolina, showing results of the Richland County Pilot Project. My notes are supplied. Also supplied is a copy of the article from The State entitled, "Project Slashes Backlog of Richland Court Cases."

January 25, 2002: South Carolina Bar Convention, Charleston, South Carolina, 17th Annual Criminal Law Update. I participated in a panel discussion regarding recent decisions affecting criminal law in South Carolina. I have no notes, transcript or recording. The address of the Bar Association is 950 Taylor Street, Columbia, South Carolina 29201.

1996 – 2002, South Carolina Circuit Judges Advisory Committee I taught at the new circuit judge's orientation in the area of criminal law and procedure. In doing so, I used the *Criminal Trial Benchbook for New Circuit Judges*, which I supplied in my response to question 12(a).

February 19, 1999: Winning Evidence: Making Rules Work for You, South Carolina Bar CLE Division. Notes are supplied.

September 1998: Post Trial Motions: New Developments in Case Law, South Carolina Bar CLE Division. Notes are supplied.

June 1998: A Reporter's Guide to Opening and Closing Court Doors, South Carolina Bar Association and S.C. Press Association Joint Seminar. The speech addressed the South Carolina rules and case law concerning when and under what circumstances a court proceeding could be closed and the right of the press to challenge the closing. I have no notes, transcript or recording. The address of the Bar Association is 950 Taylor Street, Columbia, South Carolina 29201.

May 8, 1998: Scheduled speaker at ceremony of appreciation for retiring Comptroller General Earle E. Morris Jr., Pickens County Courthouse. After searching my records, public records databases, and the Internet, I have been unable to confirm or recall whether I did or did not give this speech. I have no notes, transcript or recording. The address of the Courthouse is 214 East Main Street, #A100, Pickens, South Carolina 29671.

May 1998: Courtroom Decorum, S.C. Women Lawyers Association. The speech was a list of personal tips about maintaining proper decorum. I have no notes, transcript or recording. The address of the Association is P.O. Box 11910, Columbia, South Carolina 29211.

January 1998: The Complex Case in the State Court System: Trial by Endurance, South Carolina Bar CLE Division. Notes are supplied.

August 1997: Update of Comparative Negligence, Friend or Foe?, South Carolina Circuit Court Judges Association Annual Conference. I have no notes, transcript or recording. The Association does not have a physical address, but the address of the South Carolina Judicial Department is 950 Taylor Street, #120, Columbia, South Carolina 29201.

May 1997: Executions/Judgments and Forfeitures Roundtable, South Carolina Association of Clerks of Courts. I have no notes, transcript or recording. The Association does not have a physical address. The Association is currently headed by David Hamilton, York County Clerk of Court. Hamilton can be reached at P.O. Box 649, 1675 – 1G York Highway, York, South Carolina 29745.

September 13, 1996: Post Trial Procedures: Punitive Damage Award Review, Motions for New Trial Nisi, and Motions for New Trial Absolute, South Carolina Bar CLE Division. Notes are supplied.

October 1995: Overview of the New South Carolina Rules of Evidence Panel Discussion, South Carolina Solicitors Association Annual Conference. I have no notes, transcript or recording. The address of the Association is P.O. Box 1125!, Columbia, South Carolina 29211.

August 1995: Speaker, Rule 40: A Basis for Differentiated Case Management, South Carolina Circuit Judges' Association Annual Conference, Columbia, South Carolina. This was basically a repeat of the previously presented talk on Rule 40 from the June 1995 CLE (a copy of which is supplied).

June 1995: SCRCP Rule 40 and the Complex Litigation Track, South Carolina Bar CLE Division. Notes are supplied.

December 1994: Mass Tort Litigation – Is Efficiency an Enemy of Justice? Greenville County Bar Association. At the time this talk was given, I was managing all the breast implant litigation in the state, and the speech addressed some of the problems I was encountering. I have no notes, transcript or recording. The address of the Bar Association is P.O. Box 10145, Greenville, South Carolina 29603.

December 1993: Speaker, State Court Update — A Day with the Judges, Greenville County Bar Association. This was a recap of major state court appellate decisions for that year. I have no notes, transcript or recording. The address of the Bar Association is P.O. Box 10145, Greenville, South Carolina 29603.

October 1993: Speaker, *Prior Bad Acts*, South Carolina Solicitors' Association. The speech was about South Carolina Rule of Evidence 404(b) or the *Lyle* rule, and was a survey of the case law and the procedure to follow in seeking admission of 404(b) material. I have no notes, transcript or recording. The address of the Association is P.O. Box 11251, Columbia, South Carolina 29211.

October 1992: Ethics in Closing Arguments, South Carolina Solicitors Association, P.O. Box 11251, Columbia, South Carolina 29211. The speech was about the "do's" and "don'ts" in making a closing argument under the rules and case law of South Carolina. I have no notes, transcript or recording. The address of the Association is P.O. Box 11251, Columbia, South Carolina 29211.

October 1992: Comparative Negligence: Friend or Foe?, South Carolina Bar CLE Division. Notes are supplied.

June 25, 1992: My investiture ceremony as a South Carolina Circuit Judge for the Thirteenth Judicial Circuit. Transcript and press coverage supplied.

June 1992: Comparative Negligence in South Carolina, South Carolina Bar CLE Division, 950 Taylor Street, Columbia, South Carolina 29201. Notes are supplied.

January 16, 1987: Family Law Program, Legal Education Institute, Greenville, South Carolina. I spoke on evidence, procedure and equitable property distribution. I have no notes, transcript or recording. I am unable to recall what

the Legal Education Institute was or whether it goes by another organizational name at present.

For several years, I have participated as a judge for mock trial competitions. For instance, on April 8, 2005, I served as a presiding judge in the intra-school moot court competition at Emory University School of Law. Prior to the competition, I also spoke to a class. Also, on November 4, 2010, I presided over the University of South Carolina School of Law's Mock Trial Competition. I have no notes, recordings or transcripts, but University of South Carolina coverage of the 2010 competition is supplied.

From 1996 to 2002, as a member of the South Carolina Circuit Judges Advisory Committee, I taught at the new circuit judges orientation. The subject matter of these classes was criminal law and procedure. I do not know the dates of these courses, and I have no notes, transcripts or recordings.

In addition to these speeches or presentations, from 1973 to the present, I have given over a dozen other speeches, mostly to civic clubs. Some were to entities like a municipal or county association. All of the talks were either informing a group about the status of legislation, about legislative procedures, or about court procedures. I have also given a few speeches about the humorous things that have happened to me in the courtroom. Most of these speeches occurred many years ago and I am unable to provide more specific information about their dates and locations; nor do I have copies of, or notes from, these speeches.

I occasionally gave remarks on the floor of the South Carolina House of Representatives and in committee hearings during my service as a legislator from 1973 to 1978, but I do not have any notes from such remarks and no transcript or recording of them is available. These remarks were delivered at the State House, 1101 Gervais Street, Columbia, South Carolina 29211.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Eric Connor, Obama's Appellate Court Choice has Record of Independence, Greenville News, Jan. 28, 2011. Copy supplied.

James Rosen, Obama Nominates S.C. Federal Judge to Appellate Court, McClatchy Washington Bureau, Jan. 27, 2011. Copy supplied.

President's Article, G-BAR NEWS, April 2010, at 3. Copy supplied.

Katrina Daniel, Legal Lion, GREENVILLE MAGAZINE, June 2009, at 24. Copy supplied.

Dudley Brown, Russell Watches Over, SPARTANBURG HERALD-JOURNAL, Dec. 16, 2008. Copy supplied.

Ruminations, G-BAR NEWS, January 2007. Copy supplied.

Lauren Markoe, *Humane Instincts Distinguish Floyd*, THE STATE, Sept. 28, 2003, at B1. Copy supplied.

Andy Paras, Senate Backs Seating Floyd on Fed Bench, THE GREENVILLE NEWS, Sept. 24, 2003, at B1. Copy supplied.

Lauren Markoe, *Panel Advances Floyd's Nomination*, THE STATE, Sept. 5, 2003, at B1. Copy supplied.

Lauren Markoe, Senate Panel Holds Floyd's Judicial Hearing, THE STATE, July 31, 2003, at B3. Copy supplied.

Rick Brundrett, Budget Cuts Blamed Again for Jail Stays, The STATE, July 23, 2003, at B1. Copy supplied.

Nichole Monroe Bell & Henry Eichel, Judge: Mental Health Must Explain Backlog: Budget Was Blamed for Ill People Stuck in Jail, CHARLOTTE OBSERVER, July 22, 2003, at 1B. Copy supplied.

Aaron Gould Sheinin, Mental Health Officials to Give Answers in Court, THE STATE, July 22, 2003, at A1.

Anna Simon, Pickens Judge Gets Federal Nomination, THE GREENVILLE NEWS, May 17, 2003, at B2. Copy supplied.

Lauren Markoe, Floyd Nominated to be Federal Judge, THE STATE, May 16, 2003, at B1. Copy supplied.

Circuit Judge Henry Floyd Nominated for Federal Judgeship, ASSOCIATED PRESS, May 16, 2003. Copy supplied.

Rick Brundrett, Project Slashes Backlog of Richland Court Cases, THE STATE, Jan. 23, 2003, at B1. Copy supplied.

John Boyanoski, Pickens Judge: System to Ease Backlog Working, THE GREENVILLE NEWS, May 29, 2002, at B1. Copy supplied.

John Boyanoski, *Docket Plan Working: Next Hurdle in May*, THE GREENVILLE NEWS, Mar. 4, 2002, at B1. Copy supplied.

John Boyanoski, Fewer Cases, Convictions, Yet Justice Slows, THE GREENVILLE NEWS, Dec. 30, 2001, at A1. Copy supplied.

John Boyanoski, Judge Aims to Ease Court Backlog, THE GREENVILLE NEWS, May 14, 2001, at B1. Copy supplied.

Circuit Court Judge Puts Backlogged Criminal Cases on a Fast-Track, ASSOCIATED PRESS, May 14, 2001 [reprinted in the CHARLOTTE OBSERVER and COLUMBIA STATE on May 15, 2001]. Copy supplied.

Erikah Haavie, *Pickens Courthouse Security Questioned*, THE GREENVILLE NEWS, Sept. 20, 2000, at B1. Copy supplied.

Andrea Weigl, *Indictment Sought in Investigation of Mann*, THE GREENVILLE NEWS, Apr. 5, 2000, at A1. Copy supplied.

Diane Norman, Crowded Jail Drives County to Action, HERALD-JOURNAL, May 9, 1999, at A1. Copy supplied.

Weekend Inmate System Not Working Well in Spartanburg County, ASSOCIATED PRESS, Mar. 6, 1999. Copy supplied.

Mandatory Drug Sentences Not Followed, Study Finds, CHARLOTTE OBSERVER, July 19, 1998, at 8Y. Copy supplied.

Dave Breitenstein, Lack of Potential Jurors Causes Courts to Struggle with Trials, ANDERSON INDEPENDENT-MAIL, July 11, 1998. Copy supplied.

Dave Breitenstein, Intervention Program Helps Rehabilitate Criminals, ANDERSON INDEPENDENT-MAIL, Mar. 27, 1998. Copy supplied.

Kathy Steele, Judge Ready to Start New Ellenton Case, AUGUSTA CHRONICLE, Sept. 8, 1996, at CO2. Copy supplied.

Kathy Steele, Beasley Considering Response to Resignations, AUGUSTA CHRONICLE, Aug. 3, 1996, at C2. Copy supplied.

Kathy Steele, Judge Gives Alternative to Prison, AUGUSTA CHRONICLE, May 2, 1996, at C9. Copy supplied.

S.C. Courts Brace for Onslaught of Breast-Implant Lawsuit Cases, THE STATE, Nov. 17, 1995, at B12. Copy supplied.

Mona Breckenridge, S.C. Chief Justice Ernest Finney, CHARLOTTE OBSERVER, Sept. 15, 1995, at 5C. Copy supplied.

Death Penalty Expensive, HERALD-JOURNAL, Feb. 15, 1993. Copy supplied.

Anna Simon, Floyd Sworn in as Pickens Judge, THE GREENVILLE NEWS, June 26, 1992, at C1. Copy supplied.

Pickens to Pay Murder Defendant's Fees, THE STATE, Jan. 5, 1992, at 5B. Copy supplied.

Senator's Widow Wins S.C. Race, ROCK HILL HERALD, Sept. 16, 1981, at 14. Copy available on-line:

http://news.google.com/newspapers?id=vyotAAAAIBAJ&sjid=qYEAAAAIBAJ&pg=2930.1752305&dq=henry+floyd&hl=en.

Carolyn Teague, Bills Ask Home Rule Act Change, ROCK HILL HERALD, Feb. 18, 1976, at 1. Copy available on-line:

http://news.google.com/newspapers?id=1iAtAAAAIBAJ&sjid=gqQEAAAAIBAJ&pg=2042,4135511&dq=henry+floyd+pickens&hl=en.

School Aid Bill Recalled by the House, HERALD-JOURNAL, Feb. 13, 1975, at B8. Copy available on-line:

http://news.google.com/newspapers?id=X0QsAAAAIBAJ&sjid=Ls0EAAAAIBAJ&pg=2980,1988320&dq=henry+floyd+pickens&hl=en.

Bills Would Stop Price Fixing, Provide Free Textbooks for All, HERALD-JOURNAL, Jan. 11, 1974, at B1. Copy available on-line: http://news.google.com/newspapers?id=wlAsAAAAIBAJ&sjid=Uc0EAAAAIBAJ&pg=5771.1957944&dq=henrv+floyd+pickens&hl=en.

Avoiding National Support, OLD GOLD & BLACK, Sept. 20, 1968, at 2. Copy supplied.

13. <u>Judicial Office</u>: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

In 1992, I was elected by the South Carolina General Assembly as a Circuit Court Judge for the Thirteenth Judicial Circuit of South Carolina. In South Carolina, the Circuit Court is a court of general trial jurisdiction. On the criminal side, its responsibilities range from minimum penalties of thirty days to imposition of the death penalty. On the civil side, its judges have complete and concurrent jurisdiction over civil matters other than domestic and probate litigation, with limited exceptions. During my years as a Circuit Judge, I was designated to sit as an Acting Justice on the South Carolina Supreme Court from time to time. I served as a State Circuit Court judge until my appointment as a United States District Judge.

In 2003, I was appointed by President George W. Bush as a United States District Judge in the District of South Carolina, where I am currently serving. Since becoming an Article III judge, I have sat by designation several times on the United States Court of Appeals for the Fourth Circuit.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

During my service as a federal judge, I have presided over approximately 35 civil and criminal cases to verdict or judgment. In my eleven years on the state bench, I presided over approximately one thousand criminal and civil cases to verdict or judgment.

i. Of these, approximately what percent were:

jury trials: 80% bench trials: 20% civil proceedings: 40% criminal proceedings: 60%

 Provide citations for all opinions you have written, including concurrences and dissents.

See Attached List.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - Padilla v. Hanft, 389 F. Supp. 2d 678 (D.S.C. 2005), rev'd, 423 F.3d 386 (4th Cir. 2005), motion to vacate denied, 432 F.3d 582 (4th Cir. 2005), cert. denied, 547 U.S. 1062 (2006).

In this habeas corpus proceeding, I granted Petitioner's motion for summary judgment, issued a writ of habeas corpus, and directed the government to either bring criminal charges against Petitioner or release him. I concluded that Congress had not authorized the detention of Petitioner, an American citizen arrested on American soil and detained as an enemy combatant. The Court of Appeals reversed, concluding that the President had been granted the authority to detain Petitioner as an enemy combatant, rendering improper the issuance of the writ of habeas corpus. Petitioner sought a writ of certiorari from the Supreme Court. The government subsequently moved the Court of Appeals for authorization to transfer Petitioner immediately out of military custody and into federal civilian law enforcement custody and suggested that

the Court of Appeals withdraw its earlier opinion. The Court of Appeals denied the request. Thereafter, the Supreme Court granted the government's request regarding the transfer and denied as moot Petitioner's application for certiorari.

Counsel for the Petitioner: Michael P. O'Connell, Stirling O'Connell and Pennington, P.O. Box 882, Charleston, SC 29402, (843) 577-9890; Jonathan Marc Freiman, National Litigation Project, 127 Wall Street, New Haven, CT 06570, (203) 498-4584; Donna R. Newman, 121 West 27th Street Suite 1103, New York, NY 10001, (212) 229-1516. Counsel for the Government: Kevin F. McDonald, U.S. Attorney's Office, 1441 Main Street, Suite 500, Columbia, SC 29201, (803) 929-3000.

Al-Marri v. Wright, 443 F. Supp. 2d 774 (D.S.C. 2006), rev'd, 487 F.3d 160 (4th Cir. 2007), rev'd en banc, Al-Marri v. Pucciarelli, 534 F.3d 213 (4th Cir. 2008), vacated by, Al-Marri v. Spagone, 129 S. Ct. 1545 (2009).

In this case, Petitioner challenged his military detention as an enemy combatant. Applying the Supreme Court's *Hamdi* opinion, I concluded that the government had put forth sufficient evidence to support Petitioner's detention as an enemy combatant and that Petitioner had failed to put forth evidence contradicting this information. In a two-to-one opinion, the Court of Appeals reversed. Subsequently, the case was argued en banc. In a divided opinion, the Court of Appeals reversed. Writing the controlling concurrence, Judge Traxler concluded that Congress had authorized the President to detain enemy combatants but that Petitioner was denied due process in his attempt to challenge the factual basis for his designation as such. When Petitioner was transferred into civilian custody, the Supreme Court vacated the opinion of the Court of Appeals.

Counsel for the Petitioner: Andrew John Savage, III, Savage and Savage, P.O. Box 1002, Charleston, SC 29402, (843) 720-7470; Jonathan L. Hafetz, American Civil Liberties Union, 125 Broad Street, New York, NY 10004, (212) 549-2583; Lawrence Steven Lustberg, Gibbons Del Deo Dolan Griffinger and Vecchione, One Riverfront Plaza, Newark, NJ 07102, (973) 596-4500; Mark A. Berman, Hartmann Doherty Rosa and Berman, 126 State Street, Hackensack, NJ 07601, (201) 441-9056. Counsel for the Government: Kevin F. McDonald, U.S. Attorney's Office, 1441 Main Street Suite 500, Columbia, SC 29201, (803) 929-3000.

3. United States v. McIver, 8:04-cr-00745-HFF (D.S.C. 2005).

Defendant was charged with unlawful distribution of a controlled substance, unlawful distribution of a controlled substance resulting in a death, and conspiracy to unlawfully distribute a controlled substance. Defendant operated a medical clinic for the purpose of treating chronic pain. The

evidence at trial demonstrated that a Drug Enforcement Agency investigation of the clinic found that Defendant prescribed massive quantities of controlled substances to his patients, some of whom traveled great distances, appeared without referrals, paid in cash, and were prescribed drugs that they specifically requested after little or no examination. This trial required me to make rulings concerning expert testimony, which are atypical in most criminal proceedings. After a seven day trial, Defendant was convicted. I sentenced him to 360 months incarceration and five years supervised release. The Court of Appeals subsequently affirmed Defendant's conviction and sentence. United States v. McIver, 470 F.3d 550 (4th Cir. 2006).

Counsel for the Government: William Corley Lucius, U.S. Attorney's Office, P.O. Box 10067, Greenville, SC 29603, (864) 282-2100. Counsel for the Defendant: Clarence Rauch Wise, 305 Main Street, Greenwood, SC 29646, (864) 229-5010.

Defendant subsequently filed a motion to vacate pursuant to 28 U.S.C. § 2255, which I granted in part and denied in part. Specifically, I vacated the two counts concerning the death of one of Defendant's patients. A copy of that order is supplied. At resentencing, the Guidelines provided for a sentence in the range of 121 to 151 months imprisonment and three years supervised release. After considering the factors set forth in 18 U.S.C. § 3553(a) and the evidence presented to me that Defendant has cancer and has been given just one year to live, I sentenced Defendant to time served (66 months) and three years supervised release.

Counsel for the Government: William J. Watkins, Jr., U.S. Attorney's Office, P.O. Box 10067, Greenville, SC 29603, (864) 282-2100. Counsel for the Defendant: Peter Robert Zeidenberg, DLA Piper US, 500 Eighth Street NW, Washington, DC 20004, (202) 799-4531.

 United States v. Trout, Criminal Action No. 6:08-cr-01055-HFF (D.S.C. 2009).

Except for the *Padilla* case, this case received more local media attention than any other that I have presided over since I have been on the federal trial court. The matter involved a local county councilman who was accused of illegally accessing the computer of the county administrator with computer spyware. In doing so, Defendant found highly embarrassing information about the county administrator's personal life, which the Defendant wished to make known to the jury. I disallowed such disclosure. Defendant's main defense was that, as a county councilman, he was in effect the supervisor of the county administrator and, thus, was able to access the county administrator's county computer. I ruled, however, that state law makes clear that it is the county council as a whole, and not an individual county councilman, who supervises county employees. Defendant was convicted of violations of the Computer

Fraud and Abuse Act, 18 U.S.C. § 1030 and the Electronic Communications Privacy Act, 18 U.S.C. § 2511. Because this is one of the few convictions in the country under the Electronic Communications Privacy Act, there was little case law to guide me in some of my rulings. I sentenced Mr. Trout to one year and one day incarceration and three years supervised release. The Court of Appeals subsequently affirmed his conviction and sentence. *United States v. Trout*, No. 09-4719, 2010 WL 893430 (4th Cir. Mar. 12, 2010).

Counsel for the Government: Dean A. Eichelberger, U.S. Attorney's Office, 1441 Main Street Suite 500, Columbia, SC 29201, (803) 929-3000; Josh Goldfoot, U.S. Department of Justice, Computer Crime and Intellectual Property Section, 1301 New York Avenue, N.W., Suite 600, Washington, DC 20005, (202) 514-1026. Counsel for the Defendant: Benjamin Thomas Stepp, Federal Public Defender's Office, Two Liberty Square, 75 Beattie Place, Suite 950, Greenville, SC 29601, (864) 235-8714.

 South Carolina v. LendingTree, LLC, 6:08-cv-03044-HFF (Lead Case), slip op. (D.S.C. May 19, 2009).

Most of the solicitors in South Carolina brought separate civil actions in state court in the name of the State against Defendant for alleged violations of the South Carolina Mortgage Broker's Act. Defendant removed the actions to this Court pursuant to the Class Action Fairness Act (CAFA). Plaintiffs moved to remand, and Defendant argued that the solicitors were actually bringing the actions in a representative capacity and, as such, the actions were properly removeable pursuant to CAFA. Defendant based much of its argument on CAFA's legislative history. Inasmuch as the statute is clear that a class action must be brought by one or more representative persons, I ruled that looking at the legislative history was improper. Accordingly, in that the actions were brought in the name of the State, and not in a representative capacity, I remanded the cases to state court.

Counsel for Plaintiff: Carl Frederick Muller, Wyche Burgess Freeman and Parham, P.O. Box 728, Greenville, SC 29602, (864) 242-8200; Matthew T. Richardson, Wyche Burgess Freeman and Parham, P.O. Box 12247, Columbia, SC 29211, (803) 254-6542. Counsel for Defendant: Benjamin Rush Smith, III, Nelson Mullins Riley and Scarborough, P.O. Box 11070, Columbia, SC 29211, (803) 799-2000; John T Moore, Nelson Mullins Riley and Scarborough, P.O. Box 11070, Columbia, SC 29211, (803) 255-9415.

Russell v. Wachovia Bank, N.A., No. 99-CP-42-367, aff'd, 353 S.C. 208, 578 S.E.2d 329 (2003), aff'd in part and rev'd in part on subsequent appeal, 370 S.C. 5, 633 S.E.2d 722 (2006).

This civil case involved a challenge to the will of the late Judge Donald Russell, who died with an estate worth \$33 million. Two of his children

asserted that his will was invalid as the product of undue influence. Given the undisputed evidence of Judge Russell's competence, I granted Defendant's motion for summary judgment, concluding that there were no genuine issues of material fact regarding whether the will was the product of undue influence. Specifically, the evidence established that Judge Russell actively worked as a circuit court judge until the day of his death. Moreover, Judge Russell generally met with his estate attorney alone, and there was no evidence that the alleged improper benefactors ever met with Judge Russell and his attorney. With the clarification that North Carolina law governed the interpretation of certain trust documents, my decision was affirmed on appeal by the South Carolina Supreme Court. Subsequently, after additional proceedings, I struck down the no-contest clauses in the will, imposed sanctions against one of the children, and found that other children had waited too long to file their motion for sanctions. The South Carolina Supreme Court upheld my imposition of sanctions, but concluded that I should have considered the other motion for sanctions and also that the no-contest clause was valid.

Counsel for Plaintiff: Neil Robinson, 1125 East Morehead Street, Suite 207, Charlotte, NC 28204, (704) 373-0077. Counsel for Defendants: Hoover C. Blanton, Hopkins & Campbell, LLP, P.O. Box 11963, Columbia, SC 29211, (803) 255-0998; Moffatt G. McDonald, Haynsworth, Sinkler, Boyd, PA, P.O. Box 2048, Greenville, SC 29602, (864) 240-3336; Stanley Case, Butler, Means, Evins, & Browne, PA, P.O. Drawer 451, Spartanburg, SC 29304, (864) 585-2034.

 Hanahan v. Simpson, No. 92-CP-23-4296 (Order for Sanctions), aff'd in part, rev'd in part, 326 S.C. 140, 485 S.E.2d 903 (1997).

This case was another will challenge, but, unlike Russell, it proceeded to a jury trial on most issues. Specifically, the will involved the \$48 million estate of Henry Belk Simpson. One of Mr. Simpson's daughters challenged the will as the product of fraud, mistake, and undue influence. Plaintiff was concerned about a special power of appointment in her father's will that, if exercised, allowed her mother to by-pass her and pass her share to her children. The evidence revealed that Mrs. Simpson was given this power to take advantage of any tax law changes that might encourage generation skipping. After a two-week trial, I granted a directed verdict as to the issues of fraud and mistake. The jury then considered the question of undue influence and determined that the will was not the product of undue influence. I also ordered Plaintiff to pay \$548,317.38 in damages under the South Carolina Frivolous Civil Proceedings Act. The South Carolina Supreme Court affirmed my conclusions as to the validity of the will, but it reversed my assessment of damages, finding that, because the undue influence claim survived a motion for a directed verdict, it was not frivolous.

Counsel for Plaintiff: Thomas H. Pope, Pope & Hudgens PA, P.O. Box 190, Newberry, SC 29108, (803) 276-2532. Counsel for Defendant: R. David Massey, Brown, Massey, Evans, McLeod, & Haynsworth, P.O. Box 2464, Greenville, SC 29602, (864) 271-7424; John A. Hagins, Jr., Covington, Patrick, Hagins, Sterns, & Lewis, P.O. Box 2343, Greenville, SC 29602, (864) 242-9000; Elizabeth Van Doren Gray, Sowell Gray Stepp & Laffitte, LLC, P.O. Box 11449, Columbia, SC 29211, (803) 231-7827.

 State v. Council, No. 94-GS-2-1049, aff d, 335 S.C. 1, 515 S.E.2d 508 (1999), cert. denied, 528 U.S. 1050 (1999).

This case was one of the most graphic and gruesome murder trials of my legal career, but it is also a case that continues to have legal significance in South Carolina. In particular, I was one of the first judges in the country to address the admissibility of mitochondrial DNA evidence. I concluded that this evidence was admissible under South Carolina's Rules of Evidence and also under Daubert. Though the state supreme court did not adopt Daubert, it did approve my application of the South Carolina Rules of Evidence and upheld my admission of the DNA evidence. The court also upheld my exclusion of polygraph results during the penalty phase of the trial.

Counsel for the State: Barbara Morgan, 342 Dupree Place, Aiken, SC 29801. Defense Counsel: James E. Whittle, Johnson, Johnson, Whittle & Snelgrove, P.O. Box 2619, Aiken, SC 29802, (803) 641-4517.

State v. Humphries, No. 94-GS-23-4175, aff'd, 325 S.C. 28, 479 S.E.2d 52 (1996).

This was a death penalty case in which Defendant was tried and convicted of murder. It involved at least two unique legal issues. I instructed the jury that attempted armed robbery accompanying murder is an aggravating circumstance in determining whether to sentence one to life or to death. The South Carolina Supreme Court agreed with my instruction. On appeal, Defendant also challenged the introduction of victim impact testimony because he was not provided notice that the State was offering such testimony. The court also affirmed my admission of the victim impact evidence.

Counsel for the State: Joe Watson, 664 East Washington Street, Greenville, SC 29601, (864) 467-0380. Defense Counsel: John Mauldin, P.O. Box 10264, Greenville, SC 29603, (864) 467-8522.

State v. Beckham, No. 96-GS-36-79, aff'd, 334 S.C. 302, 513 S.E.2d 606 (1999).

This was one of the most high profile cases I ever tried as a judge. It involved the murder of the daughter of a prominent state senator by the son of an Episcopal bishop. The three-week trial was televised live on Court Television without incident. A jury found Defendant guilty, and I sentenced him to life in prison. Defendant appealed many of my evidentiary decisions to the South Carolina Supreme Court, but my decisions were affirmed and Defendant's conviction was upheld.

Counsel for the State: W. Townes Jones, IV, 116 Court Avenue West, Greenwood, SC 29646. Defense Counsel: Richard Harpootlian, P.O. Box 1090, Columbia, SC 29202, (803) 252-4848; Jack Swerling, 1720 Main Street #301, Columbia, SC 29201, (803) 765-2626.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - Padilla v. Hanft, 389 F. Supp. 2d 678 (D.S.C. 2005), rev'd, 423 F.3d 386 (4th Cir. 2005), motion to vacate denied, 432 F.3d 582 (4th Cir. 2005), cert. denied, 547 U.S. 1062 (2006).

Counsel for the Petitioner: Michael P. O'Connell, Stirling O'Connell and Pennington, P.O. Box 882, Charleston, SC 29402, (843) 577-9890; Jonathan Marc Freiman, National Litigation Project, 127 Wall Street, New Haven, CT 06570, (203) 498-4584; Donna R. Newman, 121 West 27th Street, Suite 1103, New York, NY 10001, (212) 229-1516. Counsel for the Government: Kevin F. McDonald, U.S. Attorney's Office, 1441 Main Street, Suite 500, Columbia, SC 29201, (803) 929-3000.

Al-Marri v. Wright, 443 F. Supp. 2d 774 (D.S.C. 2006), rev'd, 487 F.3d 160 (4th Cir. 2007), rev'd en banc, Al-Marri v. Pucciarelli, 534 F.3d 213 (4th Cir. 2008), vacated by Al-Marri v. Spagone, 129 S. Ct. 1545 (2009).

Counsel for the Petitioner: Andrew John Savage, III, Savage and Savage, P.O. Box 1002, Charleston, SC 29402, (843) 720-7470; Jonathan L. Hafetz, American Civil Liberties Union, 125 Broad Street, New York, NY 10004, (212) 549-2583; Lawrence Steven Lustberg, Gibbons Del Deo Dolan Griffinger and Vecchione, One Riverfront Plaza, Newark, NJ 07102, (973) 596-4500; Mark A. Berman, Hartmann Doherty Rosa and Berman, 126 State Street, Hackensack, NJ 07601, (201) 441-9056. Counsel for the Government: Kevin F. McDonald, U.S. Attorney's Office, 1441 Main Street, Suite 500, Columbia, SC 29201, (803) 929-3000.

 Hicks v. Fed. Bureau of Prisons, 603 F. Supp. 2d 835 (D.S.C. 2009), aff'd, No. 09-7205, 2009 U.S. App. LEXIS 27813 (4th Cir. Dec. 18, 2009).

Counsel for the Petitioner: David Ray Hicks (Pro Se), No. 09109-032, FCI Edgefield, P.O. Box 725, Edgefield, SC 29824. Counsel for the Government: Beth Drake, U.S. Attorney's Office, 1441 Main Street, Suite 500, Columbia, SC 29201, (803) 929-3000.

 South Carolina v. LendingTree, LLC, 6:08-cv-03044-HFF, slip op. (D.S.C. May 19, 2009).

Counsel for Plaintiff: Carl Frederick Muller, Wyche Burgess Freeman and Parham, P.O. Box 728, Greenville, SC 29602, (864) 242-8200; Matthew T. Richardson, Wyche Burgess Freeman and Parham, P.O. Box 12247, Columbia, SC 29211, (803) 254-6542. Counsel for Defendant: Benjamin Rush Smith, III, Nelson Mullins Riley and Scarborough, P.O. Box 11070, Columbia, SC 29211, (803) 799-2000; John T. Moore, Nelson Mullins Riley and Scarborough, P.O. Box 11070, Columbia, SC 29211, (803) 255-9415.

 Long John Silver's Rests., Inc. v. Cole, 409 F. Supp. 2d 682 (D.S.C. 2006), aff'd, 514 F.3d 345 (4th Cir. 2008).

Counsel for Plaintiff: Frank S. Holleman, III, Wyche Burgess Freeman and Parham, P.O. Box 728, Greenville, SC 29602, (864) 242-8200. Counsel for Defendant: Brian P. Murphy, Brian Murphy Law Firm, 514 Pettigru, Greenville, SC 29601, (864) 370-9400.

Russell v. Wachovia Bank, N.A., No. 99-CP-42-367, aff d, 353 S.C. 208, 578 S.E.2d 329 (2003), aff d in part and rev'd in part on subsequent appeal, 370 S.C. 5, 633 S.E.2d 722 (2006).

Counsel for Plaintiff: Neil Robinson, 1125 East Morehead Street, Suite 207, Charlotte, NC 28204, (704) 373-0077. Counsel for Defendants: Hoover C. Blanton, Hopkins & Campbell, LLP, P.O. Box 11963, Columbia, SC 29211, (803) 255-0998; Moffatt G. McDonald, Haynsworth, Sinkler, Boyd, PA, P.O. Box 2048, Greenville, SC 29602, (864) 240-3336; Stanley Case, Butler, Means, Evins, & Browne, PA, P.O. Drawer 451, Spartanburg, SC 29304, (864) 585-2034.

 Glover v. Suitt Constr. Co., No. 93-CP-23-2159, aff'd, 318 S.C. 465, 458 S.E.2d 535 (1995).

Counsel for Plaintiff: Robert M. Holland, P.O. Box 5506, Spartanburg, SC 29304, (864) 582-0416; John Leslie Smith, P.O. Box 5625, Spartanburg, SC 29304, (864) 596-2038. Counsel for Defendant: Jack Griffeth, Collins & Lacy, P.O. Box 5819, Greenville, SC 29606, (864) 282-9104.

 Diamonds v. Greenville County, No. 95-CP-23-2144, aff'd, 325 S.C. 154, 480 S.E.2d 718 (1997).

Counsel for Plaintiff: Suzanne E. Coe, 115 Pelham Commons Boulevard, Greenville, SC 29615, (404) 235-0636. Counsel for Defendant: W. Howard Boyd, Jr., Gallivan, White & Boyd, P.A., P.O. Box 10589, Greenville, SC 29603, (864) 271-9580; Ronald Wray, Gallivan, White & Boyd, P.A., P.O. Box 10589, Greenville, SC 29603, (864) 271-9580.

Bakala v. Bakala, 352 S.C. 612, 576 S.E.2d 156 (2003) (Floyd, J., sitting as active justice).

Counsel for Appellant: Fleet Freeman, 941 Houston Northcutt Boulevard, Suite 204, Mount Pleasant, SC 29464, (843) 216-0009. Counsel for Respondent: Robert Rosen, 18 Broad Street, Suite 201, Charleston, SC 29401, (843) 377-1700.

 Carolina First Corp., v. Whittle, No. 96-CP- 23-3123, aff d, 343 S.C. 176, 539 S.E.2d 402 (Ct. App. 2000).

Counsel for Plaintiff: John A. Hagins, Jr., Covington, Patrick, Hagins, Sterns & Lewis, P.O. Box 2343, Greenville, SC 29602, (864) 242-9000. Counsel for Defendant: David Freeman, Wyche Burgess Freeman & Parham, PA, P.O. Box 728, Greenville, SC 29602, (864) 242-8202; Wallace Lightsey, Wyche Burgess Freeman & Parham, PA, P.O. Box 728, Greenville, SC 29602, (864) 242-8207.

e. Provide a list of all cases in which certiorari was requested or granted.

The Supreme Court granted *certiorari* in the following case, for which I sat by designation as a Fourth Circuit panel member:

Mid Atl. Med. Servs., LLC v. Sereboff, 407 F.3d 212 (4th Cir. 2005), aff d, Sereboff v. Mid Atl. Med. Servs., 547 U.S. 356 (2006).

The Supreme Court granted certiorari in the following case over which I presided:

Al-Marri v. Wright, 443 F. Supp. 2d 774 (D.S.C. 2006), rev'd, 487 F.3d 160 (4th Cir. 2007), rev'd en banc, Al-Marri v. Pucciarelli, 534 F.3d 213 (4th Cir. 2008), vacated by Al-Marri v. Spagone, 129 S. Ct. 1545 (2009).

The following list identifies cases in which the Supreme Court denied *certiorari* review of cases over which I presided, or for which I sat by designation as a Fourth Circuit panel member:

4th Circuit Cases

White v. Sun Life Assurance Co. of Canada, 488 F.3d 240 (4th Cir. 2007), cert. denied, 552 U.S. 1022 (2007).

Rux v. Republic of Sudan, 461 F.3d 461 (4th Cir. 2006), cert. denied, 549 U.S. 1208 (2007).

Locklear v. Bergman & Beving AB, 457 F.3d 363 (4th Cir. 2006), cert. denied, 549 U.S. 1208 (2007).

Logan v. JKV Real Estate Servs. (In re Bogdan), 414 F.3d 507 (4th Cir. 2005), cert. denied, Stewart Title Guar. Co. v. Logan, 546 U.S. 1093 (2006).

Lambeth v. Bd. of Comm'rs, 407 F.3d 266 (4th Cir. 2005), cert. denied, 546 U.S. 1015 (2005).

United States v. Bush, 404 F.3d 263 (4th Cir. 2005), cert. denied, Bush v. United States, 546 U.S. 916 (2005).

Chaplin v. Du Pont Advance Fiber Sys., No. 04-1469, No. 04-1471, 124 F. App'x 771 (4th Cir. Mar. 10, 2005), cert. denied, Chaplin v. Du Pont Advance Fiber Sys., 546 U.S. 927 (2005).

District Court Cases

Super Duper, Inc. v. Mattel, Inc., No. 6:05-1700-HFF-WMC (D.S.C. Mar. 31, 2009), aff'd, No. 09-1397, 2010 U.S. App. LEXIS 11853 (4th Cir. June 10, 2010), cert. denied, 2011 U.S. LEXIS 720 (Jan. 18, 2011).

United States v. Miller, No-04-22, 2007 U.S. Dist. LEXIS 66872 (D.S.C. Sept. 7, 2007), cert. denied, 130 S. Ct. 393 (2009).

Roussos v. United States, No. 08-70113, slip op. (D.S.C. June 3, 2009), cert. denied, 2010 U.S. LEXIS 2428 (Mar. 22, 2010).

United States v. McDaniels, Crim. No. 06-36-HFF-1, slip op. (D.S.C. Nov. 12, 2008), cert. denied, 176 L. Ed. 2d 203 (2010).

Dempsey v. Cartledge, No. 08-1054-HFF-PJG, 2009 U.S. Dist. LEXIS 18393 (Mar. 10, 2009), cert. denied, 176 L. Ed. 2d 220 (2010).

Gantt v. United States, Crim. No. 04-1013, slip op. (D.S.C. Sept. 5, 2008), cert. denied, 130 S. Ct. 346 (2009).

Medows v. City of Cayce, No. 07-409-HFF-BHH, 2008 U.S. Dist. LEXIS 52936 (D.S.C. June 24, 2008), cert. denied, 130 S. Ct. 306 (2009).

Kilgore v. Drew, No. 08-3200, 2008 U.S. Dist. LEXIS 85307 (D.S.C. Oct. 22, 2008), cert. denied, 129 S. Ct. 2421 (2009).

Dorsey v. Burtt, No. 07-1865, 2008 U.S. Dist. LEXIS 92541 (D.S.C. Aug. 21, 2008), cert. denied, 129 S. Ct. 2793 (2009).

Cruz v. LaManna, No. 07-1060, 2008 U.S. Dist. LEXIS 14355 (D.S.C. Feb. 26, 2008), cert. denied, 129 S. Ct. 2421 (2009).

Stoudemire v. Padula, No. 07-3272-HFF-BHH, 2008 U.S. Dist. LEXIS 59865 (D.S.C. Aug. 4, 2008), cert. denied, 129 S. Ct. 2830 (2009).

United States v. Harrison, Crim. No. 07-552-HFF-1 (D.S.C. Nov. 1, 2007), cert. denied, 129 S. Ct. 610 (2008).

Webb v. Hamidullah, No. 05-2546-HFF-BM, 2006 U.S. Dist. LEXIS 50833 (D.S.C. July 24, 2006), cert. denied, Webb v. Rivera, 129 S. Ct. 1361 (2009).

Glover v. Rushton, No. 06-3454-HFF-BM, 2008 U.S. Dist. LEXIS 6675 (D.S.C. Jan. 29, 2008), cert. denied, 130 S. Ct. 24 (2009).

Long John Silver's, Inc. v. Cole, 409 F. Supp. 2d 682 (D.S.C. 2006), cert. denied, 129 S. Ct. 58 (2008).

United States v. Penland, Crim. No. 05-710-HFF-1 (D.S.C. Sept. 13, 2006), cert. denied, 553 U.S. 1059 (2008).

Wise v. South Carolina Dep't of Corr., No. 06-802-HFF-WMC, 2007 U.S. Dist. LEXIS 14680 (D.S.C. Feb. 28, 2007), cert. denied, 128 S. Ct. 2528 (2008).

Wigfall v. Burtt, No. 06-1750-HFF-RSC, 2006 U.S. Dist. LEXIS 93793 (D.S.C. Dec. 28, 2006), cert. denied, 552 U.S. 981 (2007).

Spence v. Yancey, No. 05-3478-HFF-WMC, 2006 U.S. Dist. LEXIS 39843 (D.S.C. June 14, 2006), cert. denied, 552 U.S. 1218 (2008).

United States v. McIver, Crim. No. 04-745-HFF (D.S.C. Sept. 15, 2005), cert. denied, 550 U.S. 936 (2007).

United States v. Roussos, Crim. No. 04-407-HFF (D.S.C. June 6, 2005), cert. denied, 551 U.S. 1168 (2007).

Scott v. Ozmint, No. 05-2008-HFF, slip op. (D.S.C. Jan. 30, 2006), cert. denied, 550 U.S. 922 (2007).

Allen v. SSA, No. 04-280, 2005 U.S. Dist. LEXIS 40265 (D.S.C. Feb. 15, 2005), cert. denied, 549 U.S. 861 (2006).

Pinckney v. McMaster, No. 04-22837, slip op. (D.S.C. July 12, 2005), cert. denied, 547 U.S. 1077 (2007).

Padilla v. Hanft, 389 F. Supp. 2d 678 (D.S.C. 2005), cert. denied, 547 U.S. 1062 (2006).

Stevenson v. South Carolina, No. 04-1465-HFF, slip op. (D.S.C. Mar. 3, 2005), cert. denied, 546 U.S. 1078 (2005).

Dingle v. South Carolina, No. 02-3422-HFF, slip op. (D.S.C. Sept. 15, 2004), cert. denied, 547 U.S. 1080 (2006).

Burdette v. Rushton, No. 04-1249-HFF, slip op. (D.S.C. Oct. 22, 2004), cert. denied, 546 U.S. 942 (2005).

Fluellen v. United States, No. 03-211-HFF, slip op. (D.S.C. July 29, 2004), cert. denied, 546 U.S. 869 (2005).

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

District Court Cases

United States v. Johnson, No. 8:07-960-HFF-2 (D.S.C. Nov. 14, 2008), rev'd and remanded, 617 F.3d 286 (4th Cir. 2010). The Court of Appeals reversed my admission of a DEA agent's testimony as to the meaning of certain wiretapped conversations because he was never qualified as an expert. The court also disagreed with my admission of some of Defendant's prior drug transactions.

United States v. Martinez, No. 7:08-112-HFF (D.S.C. Feb. 10, 2009), aff'd in part, vacated in part, and remanded, No. 09-4184, 2010 U.S. App. LEXIS 12554 (4th Cir. June 18, 2010). The Court of Appeals vacated my sentence of 216 months imprisonment because I failed to address Defendant's arguments for a below-guidelines sentence based on the factors set forth in 18 U.S.C. § 3553.

United States v. McDowell, No. 7:07-711-HFF (D.S.C. Apr. 7, 2009), aff'd in part, vacated in part, and remanded, No. 09-4411, 2010 U.S. App. LEXIS 12422

(4th Cir. June 17, 2010). The Court of Appeals vacated my sentence of Defendant as a career offender because he had two previous convictions for failure to stop for a blue light under South Carolina law.

United States v. Tucker, Crim. No. 7:08-666-HFF-1 (D.S.C. Apr. 3, 2009), vacated and remanded, United States v. Lynn, 592 F.3d 572 (4th Cir. 2010). The Court of Appeals reversed my decision to depart upwards from the guideline range because I failed to provide a sufficient "individualized explanation."

United States v. Garrett, Crim. No. 09-428-HFF (D.S.C. Oct. 5, 2009), aff'd, No. 09-4953, 2010 U.S. App. LEXIS 6375 (4th Cir. 2010). The Court of Appeals found that my failure to ask Defendant at sentencing if she had gone over the Presentence Investigation Report (PSR) with her attorney was error, but it was not reversible error because it did not impact the outcome of the sentencing hearing.

Wojcicki v. Aiken Tech. Coll., No. 1:06-461-HFF-BM, 2006 U.S. Dist. LEXIS 35179 (D.S.C. Mar. 27, 2008), vacated and remanded, No. 08-1469, 2010 U.S. App. LEXIS 528 (4th Cir. 2010). The Court of Appeals reversed my dismissal of an employment discrimination case for Plaintiff's failure to exhaust his administrative remedies, finding that I should have considered evidence of exhaustion presented for the first time in Plaintiff's objections to the Magistrate Judge's Report and Recommendation.

Smith v. Smith, No. 0:07-275-HFF-GCK, 2008 U.S. Dist. LEXIS 5202 (D.S.C. Jan. 22, 2008), rev'd and remanded, 589 F.3d 736 (4th Cir. 2009). The Court of Appeals reversed my dismissal of a prisoner's complaint alleging a claim of deliberate indifference, concluding that Plaintiff pled facts sufficient to state a claim for deliberate indifference.

United States v. Spears, Crim. No. 08-112-HFF-3 (D.S.C. Dec. 4, 2008), aff'd in part, vacated in part, and remanded, No. 08-5216, 2009 U.S. App. LEXIS 24624 (4th Cir. 2009). The Court of Appeals affirmed a conviction for conspiracy to murder a federal law enforcement officer based on the evidence, but it agreed with Defendant that he was indicted under the wrong statute.

United States v. Allison, Crim. No. 8:05-55-HFF-1 (D.S.C. Sept. 19, 2005), vacated and remanded, 301 F. App'x 243 (4th Cir. 2008). The Court of Appeals reversed my decision at sentencing that defendant-appellant failed to qualify for a two-level safety-valve reduction under the sentencing guidelines.

Webb v. Hamidullah, No. 05-2546-HFF-BM, 2006 U.S. Dist. LEXIS 50833 (D.S.C. July 24, 2006), aff'd, 281 F. App'x 159 (4th Cir. 2008). The Court of Appeals affirmed my granting Defendants' motion for summary judgment in a prisoner case alleging deliberate indifference, but Judge Gregory wrote a strong dissent in which he concluded that deliberate indifference existed.

Al-Marri v. Wright, 443 F. Supp. 2d 774 (D.S.C. 2006), rev'd, 487 F.3d 160 (4th Cir. 2007), rev'd, Al-Marri v. Pucciarelli, 534 F.3d 213 (4th Cir. 2008) (en banc), vacated by Al-Marri v. Spagone, 129 S. Ct. 1545 (2009). The Court of Appeals, in both a panel decision and a divided en banc opinion, reversed my finding that the government had put forth sufficient evidence to support Petitioner's detention as an enemy combatant and that Petitioner had failed to put forth evidence contradicting this information. Writing the controlling concurrence, Judge Traxler concluded that Congress had authorized the President to detain enemy combatants but that Petitioner was denied due process in his attempt to challenge the factual basis for his designation as such. When Petitioner was transferred into civilian custody, the Supreme Court vacated the opinion of the Court of Appeals.

Ellenburg v. Tom Johnson Camping Ctr., Inc., No. 06-1606-HFF, 2006 U.S. Dist. LEXIS 36911 (D.S.C. May 31, 2006), rev'd and remanded, Ellenburg v. Spartan Motors Chassis, Inc., 519 F.3d 192 (4th Cir. 2008). The Court of Appeals reversed my sua sponte remand of a products liability action, concluding that I lacked the authority to sua sponte enter a remand order on what it deemed to be procedural grounds.

United States v. Mitchell, Crim. No. 6:05-1167-HFF-1 (D.S.C. Nov. 7, 2006), rev'd, 518 F.3d 230 (4th Cir. 2008). The Court of Appeals reversed my finding Defendant guilty of aggravated identity theft in a bench trial, finding that an identifier for purposes of aggravated identify theft must be sufficient to identify a specific individual, not simply use a name of another.

Scott v. Westinghouse Savannah River Co., No. 00-1715-HFF-RSC, slip. op. (D.S.C. Sept. 29, 2004), aff'd in part and vacated and remanded in part, Sherman v. Westinghouse Savannah River Co., 263 F. App'x 357 (4th Cir. 2008). The Court of Appeals affirmed my grant of summary judgment in favor of Defendants in three of four consolidated employment discrimination cases, but reversed in the fourth, concluding that Plaintiff had presented a prima facie case.

Reed v. Ozmint, 3:08-cv-02301-HFF (D.S.C. June 20, 2008), vacated and rev'd, No. 08-7 (4th Cir. 2008), stay denied, 128 S. Ct. 2953 (2008). The Court of Appeals vacated my stay of Petitioner's execution and reversed the judgment. The Supreme Court then refused to stay the execution.

Vaughan v. Recall Total Info. Mgmt., No. 02-402-HFF (D.S.C. Apr. 6, 2005), aff d in part, rev'd in part and remanded, 217 F. App'x 211 (4th Cir. 2007). The Court of Appeals reversed two of my findings in a bench trial for a breach of contract action. The court concluded that, under the language of the contract, revenues earned by a newly acquired company should not have been included in the judgment. The court also disagreed with my conclusion that Defendant's counterclaim was barred by the limitations period provided in the sales contract.

United States v. Silver, Crim. No. 05-451-HFF (D.S.C. Sept. 19, 2005), aff'd in part, vacated and remanded in part, 208 F. App'x 201 (4th Cir. 2006). The Court of Appeals vacated my guideline sentence of fifty months, concluding that I failed to rule on Defendant's objection to a four-level increase in his offense level based on the depiction of sadistic or other violent conduct.

Padilla v. Hanft, 389 F. Supp. 2d 678 (D.S.C. 2005), rev'd, 423 F.3d 386 (4th Cir. 2005), motion to vacate denied, 432 F.3d 582 (4th Cir. 2005), cert. denied, 547 U.S. 1062 (2006). The Court of Appeals reversed my decision that Congress had not authorized the detention of Petitioner and that the government must either bring criminal charges against Petitioner or release him. Petitioner sought a writ of certiorari from the Supreme Court. Thereafter, the Supreme Court granted the government's request to transfer Petitioner immediately out of military custody and into federal civilian law enforcement custody, and denied as moot Petitioner's application for certiorari.

State Court Cases

State v. Ballenger, 322 S.C. 196, 470 S.E.2d 851 (1996). The Court of Appeals reversed me on a "throw down" drug case for failure to direct a verdict of acquittal. The Supreme Court then reversed the Court of Appeals.

State v. Grovenstein, 335 S.C. 347, 517 S.E.2d 216 (1999). The Court of Appeals reversed me on the procedure I used when it was discovered the alternate juror was in the jury room during deliberations. The Supreme Court then reversed the Court of Appeals. The case went back to the Court of Appeals on remand as to other issues. The Court of Appeals reversed my application of the rape shield statute. The case is cited in 340 S.C. 210, 530 S.E.2d 406 (Ct. App. 2000). The Supreme Court granted certiorari to review that decision, but the parties resolved the matter by agreement and withdrew the appeal before an opinion was issued.

State v. Brockman, 339 S.C. 57, 528 S.E.2d 661 (2000). The Court of Appeals reversed me concerning the admission of drug evidence found in a moped within the curtilage of Defendant's mother's home. The Supreme Court then reversed the Court of Appeals.

Osteen v. Greenville County Sch. Dist., 323 S.C. 432, 475 S.E.2d 775 (1998). The Court of Appeals reversed a workers' compensation decision of mine dealing with the application of the personal comfort doctrine. The Supreme Court then reversed the Court of Appeals.

Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (1997). The Supreme Court affirmed my handling of a wills contest but reversed my order of sanctions.

State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); State v. Wilson, 339 S.C. 491, 530 S.E.2d 126 (2000). The Supreme Court reversed the convictions of two

defendants tried together in a murder case in front of me on the ground that I should have directed a verdict of acquittal for both.

State v. Lynch, 344 S.C. 635, 545 S.E.2d 511 (2001). The Supreme Court affirmed Defendant's conviction of murder but reversed his conviction of burglary on the ground that I allowed an improper amendment to the indictment.

Hill v. State, 350 S.C. 465, 567 S.E.2d 847 (2002). The Supreme Court reversed my granting of post-conviction relief, concluding that, although I was right that an erroneous charge was given, the Defendant suffered no prejudice.

Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). The Supreme Court reversed my holding that the statute of limitations in the PCR Act barred Petitioner's claim for relief.

State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999). The Supreme Court reversed Defendant's conviction for murder because I did not let Defendant represent himself and because I admitted accomplice testimony.

Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994). The Supreme Court reversed my decision that trial counsel was ineffective for failing to request that the lesser included offense be charged and said counsel was not ineffective.

Cunningham v. Helping Hands, Inc., 352 S.C. 485, 575 S.E.2d 549 (2003). The Supreme Court reversed my grant of summary judgment in favor of one defendant based on assumption of the risk.

State v. Murphy, 322 S.C. 321, 471 S.E.2d 739 (Ct. App. 1996). The Court of Appeals reversed Defendant's conviction of intent to commit criminal sexual conduct with a minor, holding that I should have charged assault of a high and aggravated nature.

In re Breast Implant Prod. Liab. Litig., 331 S.C. 540, 503 S.E.2d 445 (1998). The Supreme Court reversed my decision that the distribution of breast implants constituted a sale under the Uniform Commercial Code rather than a service.

Revis v. Almshouse and Auto-Owners Ins. Co. & Revis v. Almshouse, UPO, No. 94-UP-185 (S.C. Ct. App. 1994). In a pedestrian/auto accident, the Court of Appeals affirmed me on the issue of whether the court had jurisdiction over the auto owner but reversed on the finding that the court did not have jurisdiction over the underinsured insurance carrier.

State v. Blassingame, UPO No. 94-UP-246 (S.C. Ct. App. 1994), rev'd and remanded. The trial judge sentenced Defendant, who was tried in absentia, and sealed the sentence until Defendant could be located. Defendant was arrested, and he was brought before me for sentencing. On appeal, some of the trial

judge's rulings were reversed. In this case, I was performing only the duty of imposing the sealed sentence in accordance with our procedure.

L. Rowland v. The Schafer Co. & J. Rowland v. The Schafer Co., UPO No. 2000-UP-259 (S.C. Ct. App. 2000). The Court of Appeals reversed my finding that Rowland was a statutory employee under our workers' compensation statute.

In the Matter of Millie Beeks: Rollison v. Beeks, UPO No. 95-UP-263 (S.C. Ct. App. 1995). The Court of Appeals reversed my affirmation of the Probate Judge's decision appointing co-guardians and payment of attorney's fees to the guardians.

Rhodes v. McDonald, 345 S.C. 500, 548 S.E.2d 220 (Ct. App. 2001). The Court of Appeals reversed my decision to allow the jury to award punitive damages in a warranty action brought by a homeowner against a contractor.

Marty Mack, Employee v. Landmark Nissan, Employer, UPO No. 96-UP- 334 (S.C. Ct. App. 1996). The Court of Appeals reversed my decision that the Workers Compensation Commission should not have denied benefits to Plaintiff.

Mullinax v. Bates, 317 S.C. 394, 453 S.E.2d 894 (1995). The Supreme Court reversed my ruling in a non-jury proceeding that Rule 13 of South Carolina Rules of Civil Procedure regarding compulsory counterclaims barred Appellant's claim.

State v. Proctor, 345 S.C. 299, 546 S.E.2d 673 (Ct. App. 2001). The Court of Appeals reversed my revocation of the Appellant's probation, holding that his adult probation case did not begin until he completed his youthful offender parole.

Sullivan v. Mayfield & Mattison v. Mayfield & VanAllen v. Mayfield, UPO No. 96-UP-265 (S.C. Ct. App. 1996). The Court of Appeals reversed my granting of summary judgment in an automobile negligence case.

Ex parte Foster, 350 S.C. 238, 565, S.E.2d 290 (2002). The Supreme Court remanded on the ground that I did not make enough findings that the defendant in a civil forfeiture action was entitled to an appointed Guardian Ad Litem.

The Jay Group, LTD v. The Bootery of Haywood Mall, 335 S.C. 114, 515 S.E.2d 542 (Ct. App. 1999). The Court of Appeals disagreed with my holding that a North Carolina judgment was entitled to full faith and credit in South Carolina.

De Bondt v. Carlton Motorcars. Inc., 342 S.C. 254, 536 S.E.2d 399 (Ct. App. 2000). In a case involving the purchase of an automobile, the Court of Appeals reversed me on the granting of summary judgment as to the Unfair Trade Practices Act and Manufacturers and Dealers Act.

State v. Evans, 343 S.C. 685, 541 S.E.2d 852 (Ct. App. 2001), rev'd, 354 S.C. 579, 582 S.E.2d 407 (2003). The Court of Appeals held that I identified the appropriate objective standard of custody in evaluating a Miranda issue, but reversed me because I made additional remarks about her mental situation, which caused the court to believe that I might have been using a subjective standard. The Supreme Court then reversed the Court of Appeals.

State v. Fletcher, 363 S.C. 221, 609 S.E.2d 572 (Ct. App. 2005), rev'd, 379 S.C. 17, 664 S.E.2d 480 (2008). The South Carolina Supreme Court reversed my decision to admit character evidence.

State v. Laney, 367 S.C. 639, 627 S.E.2d 726 (2006). In this death penalty case, the Supreme Court reversed my instruction at the sentencing phase as error because the State offered evidence of Defendant's future dangerousness and I had failed to instruct the jury that a sentence of life imprisonment meant a sentence of life without parole.

State v. Cobb, 349 S.C. 126, 561 S.E.2d 631 (Ct. App. 2002), rev'd, 355 S.C. 98, 584 S.E.2d 371 (2003). The South Carolina Supreme Court reversed my sentencing Defendant to twenty years in prison on the ground that I should have sentenced him under South Carolina's accommodation statute.

State v. James, 346 S.C. 303, 551 S.E.2d 591 (Ct. App. 2001), rev'd, 355 S.C. 25, 583 S.E.2d 745 (2003). The South Carolina Supreme Court reversed my sentencing Defendant to life in prison, holding that I erred by admitting evidence of seven of Defendant's prior burglary convictions when the statute requires proof of only "two or more" prior convictions to establish first degree burglary.

Tennis v. S.C. Dep't of Soc. Servs., 355 S.C. 551, 585 S.E.2d 312 (Ct. App. 2003). The Court of Appeals reversed my affirming the Department of Social Services' denial of Plaintiff's application to renew her license to operate a day care facility.

Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004). The Supreme Court disagreed with my holding that Petitioner had voluntarily waived his right to a direct appeal and granted him a belated appeal, but affirmed his conviction.

Austin v. State, 352 S.C. 473, 575 S.E.2d 547 (2003). The Supreme Court reversed my finding that the family court could transfer the charge of possession of a firearm during the commission of a violent crime to the circuit court.

Tilley v. Pacesetter Corp., 333 S.C. 33, 508 S.E.2d 16 (1998). The Supreme Court affirmed my judgment in its result in a South Carolina Consumer Protection action but held the applicable statute of limitations to be three years, not one year like I had found.

Cowburn v. Leventis, 366 S.C. 20, 619 S.E.2d 437 (2005). In this action, an investor in what turned out to be a Ponzi scheme sued a bank and an attorney for the losses that he suffered. The Court of Appeals affirmed my decision to grant summary judgment for both the bank and the attorney, except on the issue of the attorney's alleged violation of the South Carolina Uniform Securities Act.

Russell v. Wachovia Bank, 370 S.C. 5, 633 S.E.2d 722 (2006). The Supreme Court reversed my finding that the no-contest clauses in a will were unenforceable, upheld my imposition of sanctions against one of the children, and reversed my conclusion that one of the motions for sanctions was untimely.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a district judge, almost all (99%) of my opinions are "unpublished" in the sense that they fail to appear in the Federal Supplement. I rarely ask to have an opinion published, but, occasionally, the Federal Supplement will select one of my opinions for publication. However, a majority of my opinions are electronically published through Lexis and WestLaw. In fact, I would estimate that approximately 90% of my final orders are electronically published in this manner.

It is my understanding that the electronic databases do not publish most pre-trial, non-dispositive orders such as discovery and procedural orders. Further, according to them, they do not publish orders that are not released by the Clerk of Court's office. For an opinion to be released, the electronic filer (whether it be someone in my chambers or someone in the Clerk's office) must indicate that the opinion constitutes a written opinion. Occasionally, the filing user inadvertently fails to indicate as such. I estimate that I have written approximately 70 opinions that should have been classified as written opinions but were not. Each of these orders, along with thousands of pre-trial orders, is available through the District of South Carolina's electronic filing system, ECF.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

U.S. Court of Appeals for the Fourth Circuit, sitting by designation

United States v. Schaffer, No. 07-4187, 286 F. App'x 81 (4th Cir. July 3, 2008).

Walker v. Kelly, No. 04-22, 195 F. App'x 169 (4th Cir. Aug. 24, 2006).

District Court Cases

Padilla v. Hanft, 389 F. Supp. 2d 678 (D.S.C. 2005), rev'd, 423 F.3d 386 (4th Cir. 2005), motion to vacate denied, 432 F.3d 582 (4th Cir. 2005), cert. denied, 547 U.S. 1062 (2006).

Al-Marri v. Wright, 443 F. Supp. 2d 774 (D.S.C. 2006), rev'd, 487 F.3d 160 (4th Cir. 2007), rev'd en banc, Al-Marri v. Pucciarelli, 534 F.3d 213 (4th Cir. 2008), vacated by Al-Marri v. Spagone, 129 S. Ct. 1545 (2009).

State Court Cases

Diamonds v. Greenville County, No. 95-CP-23-2144, aff'd, 325 S.C. 154, 480 S.E.2d 718 (1997).

 Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

Opinions Authored, U.S. Court of Appeals for the Fourth Circuit

- United States v. Schaffer, No. 07-4187, 286 F. App'x 81 (4th Cir. July 3, 2008) (Floyd, J.). In this criminal appeal, Defendant challenged the admissibility of evidence seized during a warrantless search of his residence. We concluded that exigent circumstances existed to justify a warrantless search of the home and, thereby, affirmed the district court's decision to admit the evidence seized. More specifically, the evidence established that the officers who conducted the search reasonably believed that Defendant had a gun and he may have been inside the house, posing a danger to the officers and Defendant's wife.
- Schweikert v. Bank of Am., N.A., 521 F.3d 285 (4th Cir. 2008) (Floyd, J.). This was an employment case brought by a former bank vice president against his former employer. The district court dismissed the case on the grounds that Plaintiff's action was preempted by the National Bank Act (NBA). We agreed and held that the NBA preempted state law claims for wrongful discharge of bank officers.
- Hussain v. Gonzales, 477 F.3d 153 (4th Cir. 2007) (Floyd, J.). This was an immigration case in which I denied Petitioner's petition for review of an order from the Board of Immigration Appeals (Board), which denied his appeal from an immigration judge's order. The sole issue was the question of remand and whether it was properly addressed by the Board.

- We concluded that the Board failed to address the motion to remand, but, on the merits, Petitioner was statutorily prohibited from receiving an adjustment in his immigration status because he entered the country illegally.
- Newport News Shipbuilding & Dry Dock Co. v. Dir., Office of Workers' Comp. Programs, 477 F.3d 123 (4th Cir. 2007) (Floyd, J.). This case reviewed an award of attorney's fees under the Longshore and Harbor Workers' Compensation Act. Applying the statutory language, we agreed with the district court that attorney's fees for Plaintiff's counsel were justified because Plaintiff obtained greater compensation by litigating the case.
- Newport News Shipbuilding & Dry Dock Co. v. Young, No. 05-1781, 199 F.

 App'x 274 (4th Cir. Sept. 8, 2006) (Floyd, J.). This case involved a claim for benefits under the Longshore and Harbor Workers' Compensation Act.

 The Benefits Review Board awarded Plaintiff benefits, and we affirmed the award of those benefits, concluding that the Board's decision was supported by substantial evidence.
- Walker v. Kelly, No. 04-22, 195 F. App'x 169 (4th Cir. Aug. 24, 2006) (Floyd, J.). This was an appeal from the denial of federal habeas relief under 28 U.S.C. § 2254. The issue before the court was whether Petitioner had shown cause and prejudice sufficient to overcome the procedural default of his Brady claim. Applying the Strickler factors, we concluded that he had shown cause for the procedural default. Moreover, Petitioner demonstrated prejudice from the procedural default because the evidence that the State failed to disclose undermined the testimony of the State's only eyewitness. Thus, had the evidence been disclosed and admitted, it may have changed the jury's verdict.
- Locklear v. Bergman & Beving AB, 457 F.3d 363 (4th Cir. 2006) (Floyd, J.). In this products liability action, Plaintiff sought to amend his complaint and change the name of the defendant manufacturer after the statute of limitations had run. The issue on appeal was whether the amended complaint, filed during a court-ordered extension of the time for service, related back to the original complaint under what is now Federal Rule of Civil Procedure 15(c)(1)(C). We agreed with the district court that it did not relate back because Plaintiff's failure to include the proper defendant was not a "mistake" in that Plaintiff learned of the proper manufacturer eight months after filing the lawsuit.
- Simms v. Mut. Benefit Ins. Co., No. 03-2452, 137 F. App'x 594 (4th Cir. June 30, 2005) (Floyd, J.). Defendant insurance company challenged a trial court's evidentiary decision to exclude evidence of Plaintiff's financial condition on the ground that it was more prejudicial than probative under Rule 403. Reviewing for abuse of discretion, we agreed with the trial court's

decision to exclude the evidence because it could have confused the jury about the issues of the case and extremely prejudiced Plaintiff. Defendant also challenged the trial court's jury instruction that it had to prove its affirmative defense by clear and convincing evidence. Applying Maryland law, we disagreed with Defendant and affirmed the trial court's decision.

Opinions Joined, U.S. Court of Appeals for the Fourth Circuit

United States v. Branch, 537 F.3d 328 (4th Cir. 2008).

United States v. Jones, No. 06-4889, 289 F. App'x 593 (4th Cir. Aug. 20, 2008).

United States v. Henry, 538 F.3d 300 (4th Cir. 2008).

Westmoreland Coal Co. v. Amick, No. 06-2172, 289 F. App'x 638 (4th Cir. Aug. 18, 2008).

Iko v. Shreve, 535 F.3d 225 (4th Cir. 2008).

Charlie Norfolk Ctr. Assocs., L.P. v. Norfolk Redevelopment & Hous. Auth., No. 07-1571, 285 F. App'x 80 (4th Cir. July 1, 2008).

United States v. Bradshaw, No. 07-4465, 282 F. App'x 264 (4th Cir. June 24, 2008).

United States v. Anderson, Nos. 07-4303, 07-4304, 282 F. App'x 255 (4th Cir. June 20, 2008).

Flaherty v. Legum & Norman Realty, Inc., No. 07-1507, 281 F. App'x 232 (4th Cir. June 11, 2008).

Scott v. Lumbee River Elec. Mbrshp. Corp., No. 07-1169, 286 F. App'x 27 (4th Cir. June 10, 2008).

United States v. Hassan, No. 07-4602, 280 F. App'x 271 (4th Cir. June 6, 2008).

United States v. Kuai Li, No. 07-4559, 280 F. App'x 267 (4th Cir. June 6, 2008). United States v. Moran, No. 07-4312, 280 F. App'x 302 (4th Cir. June 4, 2008).

United States v. Black, 525 F.3d 359 (4th Cir. 2008).

Barnhill v. Veneman (In re Peanut Crop Ins. Litig.), 524 F.3d 458 (4th Cir. 2008). United States v. Bodkins, Nos. 06-4647, 06-4652, 274 F. App'x 294 (4th Cir. Apr. 18, 2008).

Beckner v. Am. Benefit Corp., No. 07-1225, 273 F. App'x 226 (Apr. 10, 2008). Barbe v. McBride, 521 F.3d 443 (4th Cir. 2008).

Kennedy v. Joy Techs., Inc., No. 06-2307, 269 F. App'x 302 (4th Cir. Mar. 12, 2008).

United States v. Reyes Go, 517 F.3d 216 (4th Cir. 2008).

United States v. Wallace, 515 F.3d 327 (4th Cir. 2008).

EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307 (4th Cir. 2008).

Darveau v. Detecon, Inc., 515 F.3d 334 (4th Cir. 2008).

Parts Depot, Inc. v. NLRB, Nos. 07-1178, 07-1290, 260 F. App'x 607 (4th Cir. Jan. 7, 2008).

Hyang Kyu Smart v. Mukasey, No. 06-1468, 258 F. App'x 622 (4th Cir. Dec. 19,

Wirba v. Mukasey, No. 06-1719, 257 F. App'x 619 (4th Cir. Dec. 14, 2007).

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United States v. Uhrich, Nos. 05-4486, 05-4487, 05-4490, 228 F. App'x 248 (4th
Cir. June 1, 2007).
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White v. Sun Life Assur. Co., 488 F.3d 240 (4th Cir. 2007).

United States v. Godsey, No. 06-4243, 214 F. App'x 274 (4th Cir. Jan. 24, 2007).

West Virginia v. Thompson, 475 F.3d 204 (4th Cir. 2007).

Gross v. SES Americom, Inc., No. 05-2304, 213 F. App'x 166 (4th Cir. Jan. 11, 2007).

Pension Benefit Guar. Corp. v. United Airlines, Inc., No. 05-2375, 2007 U.S. App. LEXIS 401, 39 Employee Benefits Cas. (BNA) 2741 (4th Cir. Jan. 9, 2007).

Jani v. Bert Bell/Pete Rozelle NFL Player Ret. Plan, No. 05-2386, 209 F. App'x 305 (4th Cir. Dec. 13, 2006).

United States v. Chapman, No. 04-5010, 209 F. App'x 253 (4th Cir. Dec. 8, 2006).

Board of Trs. v. BES Servs., 469 F.3d 369 (4th Cir. 2006).

Briggs v. Marriott Int'l, Inc., No. 05-1616, 205 F. App'x 183 (4th Cir. Nov. 28, 2006).

Buchbinder v. Natanzon, No. 06-1078, 205 F. App'x 984 (4th Cir. Nov. 16, 2006).

United States v. Carpenter, No. 06-4027, 204 F. App'x 260 (4th Cir. Oct. 19, 2006).

Hyman v. City of Gastonia, 466 F.3d 284 (4th Cir. 2006).

United States v. Evans, No. 06-4480, 199 F. App'x 290 (4th Cir. Sept. 12, 2006).

Rux v. Republic of Sudan, 461 F.3d 461 (4th Cir. 2006).

Cowan Sys. v. Harleysville Mut. Ins. Co., 457 F.3d 368 (4th Cir. 2006).

Naizgi v. Gonzales, 455 F.3d 484 (4th Cir. 2006).

First Penn-Pac. Life Ins. Co. v. William R. Evans, Chtd., No. 05-1336, 193 F. App'x 221 (4th Cir. July 14, 2006).

Ridpath v. Bd. of Governors Marshall Univ., 447 F.3d 292 (4th Cir. 2006).

United States v. Isom, No. 03-4960, 138 F. App'x 574 (4th Cir. July 12, 2005).

Logan v. JKV Real Estate Servs. (In re Bogdan), 414 F.3d 507 (4th Cir. 2005).

TNT Logistics of N. Am., Inc. v. NLRB, 413 F.3d 402 (4th Cir. 2005).

Trowell v. Beeler, No. 04-6531, 135 F. App'x 590 (4th Cir. May 19, 2005).

Lambeth v. Bd. of Comm'rs, 407 F.3d 266 (4th Cir. 2005).

Slade v. Hampton Rds. Reg'l Jail, 407 F.3d 243 (4th Cir. 2005).

Mid Atl. Med. Servs., LLC v. Sereboff, 407 F.3d 212 (4th Cir. 2005).

United States v. Bush, 404 F.3d 263 (4th Cir. 2005).

United States v. Evans, 404 F.3d 227 (4th Cir. 2005).

Chaplin v. Du Pont Advance Fiber Sys., Nos. 04-1469, 04-1471, 124 F. App'x 771 (4th Cir. Mar. 10, 2005).

United States v. Woolfolk, 399 F.3d 590 (4th Cir. 2005).

Devan v. Phoenix Am. Life Ins. Co. (In re Merry-Go-Round Enters.), 400 F.3d 219 (4th Cir. 2005).

Talton v. I.H. Caffey Distrib. Co., No. 04-1652, 124 F. App'x 760 (4th Cir. Jan. 18, 2005).

- 14. Recusal: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
 - a. whether your recusal was requested by a motion or other suggestion by a litigant
 or a party to the proceeding or by any other person or interested party; or if you
 recused yourself sua sponte;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;
 - c. the procedure you followed in determining whether or not to recuse yourself;
 - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

In determining whether to recuse myself from presiding over a matter, I base my decision on whether one with knowledge of the relevant facts might reasonably question my impartiality.

The Clerk of Court employs a computer program that randomly assigns cases to the various district judges in this district. When one of these assignments is made to me, the Clerk manually checks the names of the parties against the recusal list that I have submitted. If there is a match, then the case is reassigned without my knowledge that I was initially chosen to preside over the particular matter.

Below is a list of the cases that I have recused myself or refused to recuse myself and the reason for my decision:

Smith v. Smith, No. 0:07-CV-00275-HFF

In this action, Plaintiff accused me of an abuse of discretion and of judicial misconduct. He failed to set forth any specific allegations. Having considered the motion, I found that there was no factual or legal basis that would make the granting of the motion proper.

United States v. Miller, No. 6:04-CR-00022-HFF, 6:06-CV-00548-HFF
Defendant/Movant has made repeated conclusory allegations of my misconduct and racial bias against him. Simply stated, he has been unhappy with my rulings against him, which have repeatedly been affirmed by the Court of Appeals. Having considered his arguments, I have declined to grant his requests for recusal.

Smith v. Harrison, No. 6:04-CV-01188

Plaintiff stated that I was unable to adjudicate his case impartially and thus he wished for me to recuse myself from his case. He failed, however, to give any rationale for his assertion. I denied his motion.

United States v. Jones, No. 6:06-CR-00398-HFF, 6:06-CV-02427

Petitioner moved that the Chief Judge of the district remove me from this case and reassign someone else. He intimated that I was unable to reach a fair, unbiased and impartial judgment. He set forth no basis for his accusation. Consequently, I denied his requested relief.

Wood v. Wieder, 7:09-CV-03178

Plaintiff in this case is being represented by a very good friend of mine, Scott Dover. When I realized that I had been assigned the case, I contacted the Clerk to inform her that I wanted the case to be reassigned to another judge inasmuch as my impartiality in the case might be reasonably questioned.

Wise v. State, 6:09-cv-01361-HFF

In this action, Petitioner requested that I be disqualified from considering his case but gave absolutely no basis for such disqualification. The motion was denied as meritless.

Child Evangelism v. Anderson Sch. Dist., 8:04-cv-01866

This action involved a suit against a religious organization suing a school district over the use of some of the school district's facilities. Inasmuch as my wife was, at the time, in the administration of a neighboring school district, I thought that it would be prudent to inform the parties of that fact and inquire as to whether they preferred that I remove myself from the case. Inasmuch as Plaintiff requested that the case be reassigned, I agreed and directed the Clerk to reassign the case.

Blackwell v. Suntrust Bank, 7:08-cv-04125

This was a putative class action. In that I have two savings accounts with Defendant, I decided to inform the parties of that fact and to inquire as to whether they would consent to my presiding over the matter or if they would prefer that the case be reassigned. Defendant asked that we reassign the case. In light of the fact that, according to Defendant, I might have had personal knowledge of central issues in dispute in this case, which could result in my impartiality being reasonably questioned, I recused myself from this case.

Penland v. United States District Court, 6:07-cv-03284-HMH

In this action, Plaintiff sued the United States District Court and specifically accused me of wrongdoing. In light of this suit, I recused myself from further consideration of this action, along with several other civil actions that Plaintiff filed against various parties.

- S.C. Advisory Comm. on Standards of Judicial Conduct, Op. 7-1995 (1995). The Advisory Committee on Standards of Judicial Conduct handed down this advisory opinion during the time that I was a member. The Committee issued advisory opinions regarding ethical questions presented by judges. The question presented concerned the propriety of a judge accepting a prize raffled off at the Judicial Golf Classic. I did not participate in this advisory opinion because I was the judge who submitted the question.
- S.C. Advisory Comm. on Standards of Judicial Conduct, Op. 5-1996 (1996). The Advisory Committee on Standards of Judicial Conduct handed down this advisory opinion during the time that I was a member. The Committee issued advisory opinions regarding ethical questions presented by judges. The question presented concerned the propriety of individual members of the Family Court, the Circuit Court, the Court of Appeals, and the Supreme Court sponsoring a barbeque for the South Carolina General Assembly and Staff. I did not participate in this advisory opinion because I was the judge who submitted the question.
- S.C. Advisory Comm. on Standards of Judicial Conduct, Op. 2-1997 (1996). The Advisory Committee on Standards of Judicial Conduct handed down this advisory opinion during the time that I was a member. The Committee issued advisory opinions regarding ethical questions presented by judges. The question presented concerned the propriety of a circuit court judge becoming a member of a fraternal organization of former members of the South Carolina General Assembly. I did not participate in this advisory opinion because I was both a circuit court judge and former member of the South Carolina General Assembly.

15. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

From 1972 to 1978, I served in the South Carolina House of Representatives representing District 3. I was elected to three terms.

From 1973 to 1976, I was a member of the Appalachian Region Council of Governments, appointed by the Legislative delegation from Pickens County.

From 1978 to 1990, I was a Commissioner on the South Carolina Forestry Commission, appointed by Governor Richard W. Riley.

From 1986 to 1992, I served as attorney for Pickens County, having been appointed by Pickens County Council (while continuing in my full-time partner status at Acker, Acker, Floyd & Welmaker, P.A.).

In 1981, I ran unsuccessfully for the South Carolina Senate.

I have had no unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In the 1970's, I served a term on the South Carolina Democratic Party Executive Committee.

In 1976, I was on the advisory committee for Charles "Pug" Ravenel, who was running for Governor of South Carolina.

I was an assistant to Earle E. Morris, Jr., candidate for Lt. Governor of South Carolina during his campaign in 1970. I acted as his driver and messenger/scheduler.

16. Legal Career: Answer each part separately.

- Describe chronologically your law practice and legal experience after graduation from law school including;
 - whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

From 1973 to 1974, I was a solo practitioner in Pickens, South Carolina. My office address was 208 Garvin Street, Pickens, South Carolina 29671.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1974 – 1977 Floyd & Welmaker, P. A. Attorneys at Law 208 Garvin Street Pickens, South Carolina 29671 Partner 1978 – 1992 Acker, Acker, Floyd & Welmaker, P.A. Attorneys at Law 603 South Lewis Street Pickens, South Carolina 29671 Partner

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or an arbitrator.

b. Describe:

 the general character of your law practice and indicate by date when its character has changed over the years.

Initially, the firm of Floyd & Welmaker was predominantly involved in civil, criminal, and domestic litigation with the general office practices of deeds, wills, estates, and real property closings. When the firms were merged in 1978, Acker & Acker was predominantly a firm involved in property, probate, trust, and commercial activities. As we entered into the merger, eventually there was a division of the labor among the partners, and I continued primarily in the litigation areas of civil, criminal, and domestic relations. However, I was more involved in probate litigation and real property litigation, and, on a smaller scale, I continued the general "walk-in" traffic of wills, deeds, and contracts. I also represented some regulated utilities, municipalities, the County of Pickens, and an electric cooperative. Essentially, my practice remained the same from 1978 until 1992 at which time I was elected as a State Circuit Court judge.

 your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Pickens is a relatively small city in a relatively rural county and our typical clientele included general working people with everyday problems from criminal charges, domestic relations disputes, and routine civil disputes. The firm also represented some lending institutions, municipalities, and the County. We also participated in bond issues and corporate sales. I did not specialize in any particular areas of practice.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates. I appeared in court frequently, and the frequency of my appearances in court remained fairly stable during my entire career as a lawyer.

i. Indicate the percentage of your practice in:

1.	federal courts:	2%
2.	state courts of record:	80%
3.	other courts:	18%
4.	administrative agencies:	0%

ii. Indicate the percentage of your practice in:

1.	civil proceedings:	65%
2.	criminal proceedings:	35%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Over an eighteen year period, I estimate that I tried approximately 400 cases to verdict or judgment in courts of record. I estimate that 95% of the time I was either chief or sole counsel.

i. What percentage of these trials were:

1.	jury:	50%
2.	non-jury:	50%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

- 17. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and

- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- State v. Cox, No. A83-9248 (13th Cir. Ct. Gen. Sessions 1983), rev'd, 335 S.E.2d 809, 287 S.C. 260 (Ct. App. 1985) (Moore, Paul, Special Circuit Judge, presiding and McFadden, Robert L., presiding over retrial). This was the first capital murder case tried in Pickens County after reinstitution of the death penalty. It was a murder-for-hire case. In the first trial, during June of 1983, I was appointed to assist the Public Defender, J. Redmond Coyle of Pickens, South Carolina (deceased). Defendant was convicted, and the jury recommended a life sentence. On appeal, the conviction was reversed and remanded for a new trial. Upon retrial in 1987, Defendant's family retained me and the jury acquitted Defendant.

Representing the State in the first trial was William B. Traxler, Jr., then Solicitor for the Thirteenth Judicial Circuit, now Chief Judge of the U.S. Court of Appeals for the Fourth Circuit, currently at 300 East Washington Street, Suite 222, Greenville, South Carolina 29603, (864) 241-2730. Representing the State in the second trial was Benjamin T. Stepp, then Assistant Solicitor for the Thirteenth Judicial Circuit, now Assistant Federal Public Defender, 501 East McBee Avenue, Suite 202, Greenville, South Carolina 29601, (864) 235-8714.

 State v. Crunkleton, No. 90-GS-37-1179 (10th Cir. Ct. Gen. Sessions 1991) (Brown, Luke, presiding). This case was tried in March of 1991 and it arose out of manslaughter charges against my client as a result of an attack by Defendant's part Pit Bull, part Rottweiler dog upon a five-year-old child who was mauled and killed by the dog. The jury acquitted Defendant.

Prosecuting the case was Tommy B. Edwards, then Assistant Solicitor for the Tenth Judicial Circuit, now Family Court Judge for the Tenth Judicial Circuit, P.O. Box 8002, Anderson, South Carolina 29622, (864) 260-4040.

3. Giles v. Lanford & Gibson, Inc. (13th Cir. Common Pleas 1981) (Eppes, Frank, presiding), aff'd, 328 S.E.2d 916, 285 S.C. 285 (Ct. App. 1985). I represented Defendant Giles in this case, involving the use of the theory of constructive fraud in which a Plaintiff does not have to prove intent to recover under a cause of action in fraud. Plaintiff was a homeowner with a builder's risk policy who claimed his agent misled him as to the effect of coverage. The jury awarded Plaintiff \$25,000 in damages. I represented Defendant from approximately May 1981 through June 1985.

Opposing counsel in this matter was Herman E. Cox, 115 Broadus Avenue, Greenville, South Carolina, 29601 (864) 242-4711.

4. Blue Ridge Elec. Coop., Inc. v. Combined Util. Sys. of the City of Easley (13th Cir. Common Pleas 1981) (Sparks, James and Board, Joseph, presiding), aff'd, 303 S.E.2d 91, 279 S.C. 135 (1983). I represented Plaintiff, Blue Ridge Electric Cooperative, in this declaratory judgment action challenging the constitutionality of a South Carolina

eminent domain statute. The statute provides for electric utility acquisition of electric cooperative property upon payment of just compensation. The court held that the statutory formula used to compute the cooperative's just compensation was constitutional as long as it was construed as a minimum and not a limitation.

Opposing counsel were J.D. Todd, Jr. (retired), 300 East McBee Avenue, Suite 500, Greenville, South Carolina 29601, (864) 242-6440, and Felix L. Finley, Jr., Pickens, South Carolina (deceased).

5. Hayes v. Tompkins (13th Cir. Common Pleas 1982) (Cureton, Robert, presiding), aff'd, 337 S.E.2d 888, 287 S.C. 289 (Ct. App. 1985). This case involved an implied easement of necessity under South Carolina law wherein I represented Defendants. The case was tried and the lower court held there was an implied easement of necessity, which was favorable to Plaintiff, and also found that there was a right of apportionment of maintenance costs, which was in favor of Defendants. Both sides appealed, and each side lost their respective appeals. The decision as outlined above remained in effect. The value of this case is that for the first time an appellate court of South Carolina announced that apportionment of costs can be an equitable remedy notwithstanding an agreement between the parties. I represented these clients from approximately June 1982 through 1985.

Opposing counsel in this case was Felix L. Finley, Jr., Pickens, South Carolina (deceased).

6. State v. Spearman, No. 84-GS-39-142 (13th Cir. General Sessions 1984) (Eppes, Frank, presiding). This is the second death penalty case tried in Pickens County after the reinstitution of the death penalty in South Carolina. I represented Defendant Spearman. Defendant was charged with murder and the aggravating circumstance of armed robbery. Our objective in this case was to avoid the death penalty because the evidence clearly showed that he was guilty of murder and armed robbery. The jury became deadlocked and so the trial judge imposed a life sentence. I represented Defendant from approximately June 1983 through April 1984.

Co-counsel was J. Redmond Coyle of Pickens, South Carolina (deceased). Prosecuting the case was William B. Traxler, Jr. then Solicitor for the Thirteenth Judicial Circuit, now Chief Judge for the Fourth Circuit Court of Appeals, currently at 300 East Washington Street, Suite 222, Greenville, South Carolina 29603, (864) 241-2730.

7. Parrish v. Gilstrap (13th Cir. Common Pleas 1980) (Hall, Stuart, presiding), aff'd, 312 S.E.2d 4, 280 S.C. 184 (1984). I represented Plaintiff Parrish from June 1980 through May 1984. The Appropriations Act of the South Carolina General Assembly for 1979-80 mandatorily provided for a sum certain for the benefit of each county probate judge. Pickens County refused to comply with the statute and a writ of mandamus was sought and granted. On appeal, the decision was affirmed.

Opposing counsel in this case was Felix L. Finley, Jr., Pickens, South Carolina (deceased).

8. State v. Morgan (13th Cir. Gen. Sessions 1982) (Pyle, Victor, presiding), aff'd, 319 S.E.2d 335, 282 S.C. 409 (1985). I represented Defendant Morgan from November 1982 through June 1985. This case is significant for DUI practitioners because the Court clearly established the rules regarding how and when to raise the issue of corpus delicti, vis a vis custodial/non-custodial statements made during a routine traffic accident investigation. It also clarified the application of Miranda warnings as well as the extent to which a trial judge can charge the jury upon the issue of a statement rendered by an intoxicated person.

Prosecuting this case was O. Warren Mowry, Jr, then Assistant Solicitor for the Thirteenth Judicial Circuit, now at 25 Augusta Court, Greenville, South Carolina 29605, (864) 232-8125.

9. State v. Holcombe, No. 79-GS-37-244 (10th Cir. Gen. Sessions 1979) (Ballenger, Howard, presiding). I represented Defendant Holcombe, who was charged and convicted under the theory of transferred intent for the murder of a 4-year-old girl. The State's theory was that he was intending to kill the husband of his lover. This was being tried during the development of the law of burden shifting immediately following the Supreme Court's Sandstrom v. Montana decision. Burden shifting issues were raised, but the South Carolina Supreme Court summarily denied the appeal and the Supreme Court refused to grant certiorari. I represented Defendant from approximately January 1979 through November 1980.

Prosecuting this case were Henry Raines, then Solicitor for the Tenth Judicial Circuit (deceased) and John Fields, then Assistant Solicitor for the Tenth Judicial Circuit, now at 10 Commons Boulevard, Seneca, South Carolina 29678, (864) 882-1812.

10. Culler v. Blue Ridge Elec. Coop. (13th Cir. Common Pleas) (Simmons, Charles, presiding), aff'd, 422 S.E.2d 91, 309 S.C. 243 (1992). This is a case alleging wrongful discharge brought by the employee, Plaintiff Culler, against my client, Blue Ridge Electric Cooperative. The employee alleged that he was discharged for failure to contribute to Defendant's political action committee. However, at trial the evidence proved to the contrary, and the Supreme Court affirmed the lower court. This case is significant because it was one in a line of cases that helped develop the law of at-will employment in South Carolina and where the courts will allow tort actions notwithstanding the at-will employment doctrine.

Co-counsel was G. Edward Welmaker, then my law partner, now Circuit Court Judge for the Thirteenth Judicial Circuit, Pickens County Courthouse, Pickens, South Carolina 29671, (864) 898-5791. Opposing counsel was Hal J. Warlick, Pickens, South Carolina (deceased).

18. <u>Legal Activities</u>: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

For a few years, I served on the Board of Commissioners on Grievances and Discipline, which was empowered to deal with complaints against members of the Bar in this State and to make certain recommendations for disciplinary conduct. I also participated in negotiations regarding assignment of utility territory and negotiations concerning the acquisition of property for major water and utility lines. As county attorney, I was involved in the issuance of revenue and general obligation bonds. Also, I was responsible for guiding the County Council through Freedom of Information Act requests and discussions of appropriate areas for the enactment of ordinances.

While a State judge, I was also a member of the Commission on Judicial Conduct. This Commission dealt with complaints against judges by reviewing and making recommendations to the South Carolina Supreme Court. For the last four years, I have served on the Judicial Resources Committee for the Judicial Conference of the United States and continue in that capacity. We are charged with overseeing personnel policies and management of judicial resources.

During the years 1979 and 1980 I was a lobbyist for Sherman College of Straight Chiropractic. I lobbied for the expansion of the ability of straight chiropractors in this State to practice their vocation.

19. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Currently, I am drawing my retirement income from the South Carolina Judges and Solicitors' retirement system. My wife is still actively employed with the School District of Pickens County but upon retirement expects to receive South Carolina Retirement System income.

21. <u>Outside Commitments During Court Service</u>: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments, or agreements to pursue outside employment, with or without compensation during my service with the court.

22. <u>Sources of Income</u>: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. <u>Statement of Net Worth</u>: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am not aware of any conflicts in any of these categories at this time subject, however, to my current recusal list. But, in any event, I would review each case to double check if any conflict existed, and, if it did, I would recuse myself.

 Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In my present position, I always review a case assigned to me to see whether a potential conflict of interest exists, by adhering to 28 U.S.C. § 455, other relevant statutes, the Code of Conduct for United States Judges, and any applicable policies and procedures of the United States Courts. If a conflict is evident, I will recuse myself. If there is the potential for a conflict, I will contact counsel and advise them of the potential conflict and ask whether they want me to recuse myself. If confirmed for this position, I will observe the same practice.

25. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While in private practice, I participated in the South Carolina Bar pro bono program. I probably got a case per month, which would take roughly four hours of my time. For several years, I served on the Pickens County Public Defender Board. It was a three-member board with oversight responsibility for indigent representation. No pay or gratuity was involved, and it took a few hours per month. I also participated in community and church food bank programs for several years. After becoming a judge, I have not handled any pro bono matters, but I volunteer my time to assist law students and young lawyers in their transition into practice. Every summer, I also accept a number of interns to give them experience in a federal court chambers. Additionally, I have judged several mock trial competitions in the last few years.

26. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

We do not have a selection commission in our jurisdiction, but I have had at least three conversations with United States Senator Lindsey Graham about the nomination. Also, I have had communication from Democratic Congressmen Spratt and Clyburn by way of a letter that each Congressman had recommended me to the President of the United States.

Since April 2010, I have communicated with pre-nomination staff in the Department of Justice. I was interviewed by the Department's pre-nomination staff, and by the White House Office of Counsel, on August 4, 2010.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

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FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics

Rev. 1/2008	NOMINATION FILING			
1. Person Reporting (last name, first, middle initia	2. Court or Organization	3. Date of Report		
Floyd, Henry F.	Founh Circuit	01/26/2011		
Title (Article III judges indicate active or senior i magistrate judges indicate full- or part-time. Circuit Judge	Statistics Se. Report Type (check appropriate type)	6. Reporting Period 1/1/2010 to 12/31/2010		
7. Chambers or Office Address 201 Magnolia Street Spartanburg, SC 29306	On the hasts of the information contained to this R modifications persisting thereto, it is, in my opinis with applicable laws and regulations. Reviewing Officer.	on, in complisuee		
IMPORTANT checking the I	NOTES: The instructions accompanying this form must be followed. When the companying this form must be followed. When box for each part where you have no reportable information. Sign	Complete all parts, on last page.		
I. POSITIONS. (Reporting individual of NONE (No reportable position	ns.)			
POSIT		PRGANIZATION/ENTITY		
I. AGREEMENTS. (Reporting ind. NONE (No reportable agreem				
DATE	PARTIES AND TERM	<u>(S</u>		
. 1992	S.C. Judges and Solicitors Retirement System, retirement fund payable u	pon retirement at age 55		
,				

FINANCIAL DISCLOSUR	E REPORT No.	me of Person Reporting		Date of Report		
Page 2 of 6	ı	loyd, Henry F.		01/26/2011		
III. NON-INVESTMENT IN A. Flier's Non-Investment Income NONE (No reportable non-in		ldual and spouse; see pp. 17-24 of fli	ing instructions.)			
DATE	DATE SOURCE AND TYPE					
1. 2009	Judges & Solicitors Retire	ment System - retirement		\$72,540.00		
2. 2010	Judges & Solicitors Retire	ment System - retirement		\$72,345.00		
3.						
4.			·			
B. Spouse's Non-Investment Incou (Dollar amount not required except for honorarta.) NONE (No reportable non-in DATE	vestment income.)	say posion of the reporting year, o	omplese this section.			
1, 2010	School District of Pickens	County - salary	•			
2.	All the second s					
3.						
4.						
IV. REIMBURSEMENTS — (Inchides those to spowe and dependent children: so NONE (No reportable reimbi SOURCE D	re pp. 25-27 of filing instructions, ursements.)		POSE ITEMS PA	ID OR PROVIDED		
I. exempt			-	·		
2.						
3,						
4.						

FINANCIAL DISCLOSURE	REPORT	Name of Person Reporting		Date of Report
Page 3 of 6		Floyd, Henry F.		01/26/2011
V. GIFTS. (Includes thuse to spouse and depe	ndeni childreni see pj	s, 18-31 of filling instructions.)		
NONE (No reportable gifts.)				
SOURCE		DESCRIPTION		<u>YALUE</u>
1, exempt	(W-12-10-10-10-10-10-10-10-10-10-10-10-10-10-			
2.				
3,			Medicina di managana di managa	
4.				
5.				
VI. LIABILITIES. (Includes those of s,	pouse and dependent :	children; see pp. 37-33 of filling instructions.)		
NONE (No reportable liabilities	s.)			
CREDITOR		DESCRIPTION	<u>v</u> .	LUE CODE
1. Cornerstone National Bank	unsecured credit lin	8		3
2. Bank of America	mortgage on rental	property Pickens County, SC (Pt. VII, Line 9)		L
3.				
4.				
S				

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Ferion Reporting Floyd, Henry F.	Date of Report 01/26/2011				
VII. INVESTMENTS and TRUSTS – Income, volve, transactions (Includes there of spouse and dependent children; see pp. 34-40 of filing instructions.) NONE (No reportable income, assets, or transactions.)						

	Α	. B.					D. Transactions during reporting period				
	Description of Assets		me during				Transacti	ons during	reporting	period	
	(including trust assets)	telest	ting period	reportin	g period		_				
	Place "(X)" after each asset exempt from prior disclusure	(1) Amount Code I (A-H)	(2) Type (e.g., div., rent, or int.)	(I) Value Code 1 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (c.g., buy, sell, redemption)	(2) Date Month ~ Day	(3) Vetus Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)	
1.	Southern Company common stock	Α	Dividend	J	Т	Ехепірі					
2.	IRA#1	A	Dividend	J	Т						
3.	- Jennison 20/20 Focus Fund										
4.	Peoples National Bank Accounts	A	Interest	K	т			-			
5.	New York Life - Variable Universal Life Policy	A	Interest	к	т						
6.	MctLife Insumnee (formerly Travelers Life & Annuity)	Α	Interest	J	т						
7.	SunTrust Bank Accounts	Α	Interest	L	т						
8.	Pickens County, SC inherited/gifted real est ate		None	PI	S					See Part VIII	
9,	Rental property, Pickens County, SC (2009 \$52,500)	С	Rent	М	R			<u> </u>			
10.	Carolina First accounts	٨	Interest	к	т				-		
11.				-				_	L		
12.						· · · · · · · · · · · · · · · · · · ·					
13.				_		V					
14.	-			-							
15.											
6.						1					
7.											

Income Gain Codes: (See Columns B1 and D4) Value Codes (See Columns C1 and D3)	A =\$1,000 or less F =\$50,001 - \$100,000 3 =\$15,000 or less N =\$750,001 - \$500,000	B =\$1,001 - \$2,500 G =\$100,001 - \$1,000,000 K =\$15,001 - \$30,000 O =\$500,001 - \$1,000,000	C=\$2,501 - \$5,000 H1 =\$1,000,001 - \$5,000,000 L =\$50,001 - \$100,000 F1 =\$1,000,001 - \$5,000,000	D=\$3,001 - \$15,000 H2 *More than \$3,000,000 M=\$100,001 - \$150,000 P2 *\$5,000,001 - \$25,000,000	E =\$15,00(- \$50,000
3. Value Method Codes (See Column C2)	P3 =\$25,000,001 - \$50,000,000 Q =Appreisal U =Book Value	R -Cost (Real Estate Only) V =Other	P4 =More than \$50,000,000 S = Assessment W =Entirested	T -Caub Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 5 of 6	Floyd, Henry F.	01/26/2011

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Report.)

Part VII, Line 8 --- Assessed value \$1,200,000.00. Filer's interest is one-fourth of total value shown.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 6 of 6	Ployd, Henry F.	01/26/2011

IX. CERTIFICATION.

l certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accounte, true, and complete to the best of my knowledge and bellef, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that exceed income from outside conployment and bonoraria and the acceptance of gifts which have been reported are in compilance with the provisions of S U.S.C. app. § 501 et seq., S U.S.C. § 7353, and Judicial Conference regulations.

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			bian and an and the
Cash on hand and in banks		75	000	Notes payable to banks-secured		32	250
U.S. Government securities				Notes payable to banks-unsecured		8	784
Listed securities - see schedule		14	482	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		7	568
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable see schedule		441	557
Real estate owned - see schedule	l	370	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		170	000				
Cash value-life insurance		35	950				
Other assets itemize:							
				Total liabilities		490	159
				Net Worth	1	175	773
Total Assets	1	665	932	Total liabilities and net worth	1	665	932
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets piedged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	МО		
Legal Claims				Have you ever taken bankruptey?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

<u>Listed Securities</u>	
Southern Company	\$ 10,800
Prudential Jennisen 20/20 Focus Fund	3,682
Total Listed Securities	\$ 14,482
Real Estate Owned	
Personal residence	\$ 315,000
Second residence	215,000
Rental property	126,000
Undeveloped property	714,500
Total Real Estate Owned	\$ 1,370,500
Real Estate Mortgages Payable	
Personal residence (1st mortgage)	\$ 138,532
Personal residence (2nd mortgage)	43,290
2nd residence	199,500
Rental property	60,235
Total Real Estate Mortgages Payable	\$ 441,557

AFFIDAVIT

I, **HENRY FRANKLIN FLOYD**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1-24-2011 (DATE) Judge FLOYD. Thank you. May I be excused?

Senator Franken. Yes.

[Laughter.]

Senator Franken. I would now like to proceed to the second panel with Ms. Monaco.

[Nominee sworn.]

Senator FRANKEN. Thank you. Please be seated. And I understand you have an opening statement, and you should also feel free to introduce any members of your family that are with you today.

STATEMENT OF LISA O. MONACO, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, NATIONAL SECURITY DIVISION, U.S. DEPARTMENT OF JUSTICE

Ms. Monaco. Thank you very much, Chairman Franken and

Ranking Member Grassley.

I would like to introduce the members of my family who are here today. With me today are my parents, Dr. Anthony Monaco, and my mother, Mary Lou Monaco, who traveled here from my hometown of Newton, Massachusetts, as Senator Brown referenced, and I am very pleased that they are here today.

Senator Franken. Welcome.

Ms. Monaco. With them is my middle brother, Mark, and his wife, Jennifer Monaco. They traveled here from New York City, and I am very pleased they are here. My niece and nephew, Sophia and Nicholas Monaco, would have very much liked to have skipped school. However, my brother and sister-in-law I think made a wise decision.

Back home in Massachusetts, I have a twin brother and his wife, Lisa, and my nieces Jessica and Julia, and my brother, Peter, and his wife, Sara, and I suspect they're all watching on the Webcast. So I appreciate their—

Senator Franken. Welcome to them, in that case. Ms. Monaco [continuing]. Appreciate their support.

I have a number of friends and colleagues here from the department, and, also, colleagues from the National Security Division. I'm particularly honored that they're here to support me today, and a number of friends, as well. So I appreciate their support.

Chairman Franken, if I could request that my full statement be

entered into the record.

Senator Franken. It will be.

Ms. Monaco. And I have just a few brief opening remarks, if I could

Senator Franken. Sure, go ahead.

Ms. Monaco. Chairman, I want to thank Senator Brown for his very kind introduction earlier this afternoon. I also want to thank the President for his confidence in nominating me, the Attorney General for his support, and the members of this Committee for considering my nomination.

I'm here today as someone who has been extremely fortunate in my life and in my work. I would not be here today if not for the support of my parents. They have enabled me to enjoy many blessings, including pursuing work I am committed to in a department

that I love.

They have taught my brothers and I about hard work, integrity, and about living one's values. And because of these lessons, I'm very fortunate to be here today, tremendously honored to do so.

I spent nearly 13 years, Senator, in the Justice Department. In that time, the world has changed. The events of September 11 altered forever the way the department and the FBI operate, and I have been part of that transformation and learned that our Nation faces complex and evolving national security threats; and, to combat those threats, we must be aggressive, we must be agile in our approach, and we must act consistent with the rule of law.

Every morning for several years now, I have reviewed intelligence and threat streams together with talented agents, analysts and prosecutors. I have been privileged to work with Director Mueller to help advance the bureau's transformation from a law enforcement agency that investigates crime after the fact to a national security organization focused on preventing the next attack.

The same principles guided Congress in creating the position for which I have been nominated, and Congress had the wisdom to remove barriers, legal and structural, to allow committed professionals to share their information, their talent, and their missions.

The National Security Division is the embodiment of that vision, where intelligence lawyers come together with agents and prosecutors to combat terrorist plots, as well as spies and cyber criminals bent on stealing our secrets.

The mission of the division most fundamentally is to prevent terrorism and to protect the American people. If I am fortunate to be confirmed, I will be proud to serve alongside the outstanding men and women in the National Security Division.

I pledge to give my all, to carrying forward the work of those who have gone before me, mindful of the gravity of the duties I will be assuming, and committed to doing so in the best traditions of the Department of Justice.

I thank you, Mr. Chairman, and I welcome the committee's ques-

[The prepared statement of Ms. Monaco appears as a submission for the record.

Senator Franken. Thank you. And, Senator Grassley, I know you have a time constraint. So if you would like to start the questioning.

Senator Grassley. I appreciate that. And for the benefit of the other nominees, I have the Sioux City Chamber of Commerce in town and I have them as an appointment in just a little while.

It has been argued that because there is not an enemy state against which such a war on terror can be waged, the very notion of, "war on terror" is, at best, a public relations expression.

Do you agree with that sentiment or do you believe that the United States is, in fact, engaged in actual war against terrorism?

Ms. Monaco. Senator, thank you very much for that question. I think I would respond this way. I believe we are at war and I believe we are at war against a determined enemy and a very adaptable enemy, and that's been my experience in the time that I've served in the FBI and in the department.

And we need to make sure that we are able to meet the threats that come at us in that war and to be flexible as we do so.

Senator Grassley. Another question. Recently, our Attorney General announced a reversal in policy that although it was his opinion that the best venue for prosecution of terrorists was in Federal court, he made a decision to try terrorists in military court.

He noted that he made his decision only because Congress forced

him to do so.

Do you agree with the Attorney General's decision to try terrorists in military tribunal?

Ms. Monaco. Yes, Senator. My perspective on that is that we need to hold the 9/11 attackers accountable and we need to move

forward in doing so in the military commissions.

With the good work of this body and the leadership of Senator Graham and others in this Committee and elsewhere in the Congress, the military commissions were reformed and, I think, provide a legitimate fora to have a fair, thorough and just proceeding.

Senator GRASSLEY. A follow-up to that is whether or not you agree with the Attorney General's opinion that the best venue for prosecution is in Federal court and that Congress forced him to do otherwise.

Ms. Monaco. Senator, I think that Congress has an appropriate role when issues engage national security and security concerns.

As a prosecutor, though, I also think that prosecution decisions are appropriately made by those with the facts and the law in front of them and are appropriately made by prosecutors in the executive branch.

Senator GRASSLEY. The 9/11 Commission found a wall was in place prior to 9/11 between counterintelligence community and the law enforcement community. Legal and institutional reforms have taken down that wall. But I am concerned about efforts to rebuild that wall or weaken those reforms.

Do you think a wall previously existed and, if so, does it still exist?

Ms. Monaco. Senator, thank you very much for that question. I think that issue is one that we have to be ever vigilant on, and, that is, re-erecting any wall, structural, legal or perceived.

As my opening comments, I think, indicated, we are best equipped to wage a fight against terrorism when we're bringing all tools to the table, sharing intelligence in law enforcement.

The reforms that this body enacted after 9/11 and the creation of the National Security Division has enabled us to do that and I think we need to make sure that that stays the case.

Senator GRASSLEY. The Gorelick memo which established that wall was issued in 1995. Although you did not join the Department until 1998, were you involved in any subsequent review, revision or implementation of that memo?

Ms. Monaco. I don't believe so, Senator. I was—

Senator GRASSLEY. Well, let us leave it that way. But if you do think, as an afterthought to my question, submit something in writing to me.

Ms. Monaco. Absolutely, be happy to do that, Senator.

Senator GRASSLEY. Because if there is any relationship you had with that, I would like to know that.

Ms. Monaco. Certainly.

Senator GRASSLEY. Do you support the permanent extension of the PATRIOT Act provisions, which are soon to expire, the Lone Wolf provision, the roving wiretap provision, and the business records provision?

Ms. MONACO. Senator, I noted in your opening comments your focus on the PATRIOT Act and the need to reauthorize those provi-

sions, and I want to thank you for your focus on that issue.

The reforms from the PATRIOT Act and those expiring provisions, in particular, are absolutely critical tools that the National Security Division uses every day to make sure that national security investigators are able to stay on the same plane and in the level playing field with criminal investigators in the tools that they use.

I think we need to have those provisions reauthorized for a substantial period of time in order to give stability and clarity to our agents in the field who need those tools quite essentially.

Senator GRASSLEY. I may submit some questions for answer in writing, but you have got through the most important issues that I wanted to discuss with you.

Thank you, Mr. Chairman, for your courtesy.

Senator Franken. You are very welcome. And say hi to the Sioux City Chamber of Commerce.

You know what? I will turn it over to Senator Durbin, since we are going a little out of order.

Senator DURBIN. Thank you very much.

Ms. Monaco, thank you for joining us. And I certainly am impressed with your background and work as chief of staff at the FBI with Director Mueller, who is wrapping up his 10-year service as director of the Federal Bureau of Investigation.

I think he came right after 9/11 and he faced some extraordinary challenges, which I would like you to comment on. The one that struck me among so many other things that came out during the investigation of 9/11 was the status of the information systems at the Federal Bureau of Investigation on the day of that attack.

As hard as it was to believe, the computers in the Federal Bureau of Investigation on 9/11 did not have access to the Internet, did not have word check, and were incapable of transmitting photographs

Most of what I have just described was common technology available on the open market. But the FBI was that antiquated and that far behind that they sent out photos of the suspected terrorists by overnight mail, because they could not send them by computer.

Director Mueller tackled that issue and I think, by his own admission, he had some success and some failure in trying to put an up-to-date, modern computer system into the Federal Bureau of Investigation.

Now, as I understand your job that you are responding to here in the National Security Division, it is to try to break down some of the barriers between agencies so that there is at least one place or many places where we share information and can follow up on it, as you say, to prevent an attack, not to react after that.

What do you think, from your experience, is the current state of the communications technology at the FBI and in the Department of Luction when it comes to showing that information?

of Justice when it comes to sharing that information?

Ms. Monaco. Thank you, Senator Durbin. You've hit upon a critical issue in the ability of the department, the FBI, and, of course, the government as a whole to make sure that we are, for lack of a better phrase, able to connect the dots and share information and to come back and identify terrorist attacks before they occur.

From my perspective, as having served at the FBI, thankfully, by the time I got there, I had a connection to the Internet and, in fact, the bureau was operating at what they call there enclaves. In other words, each individual and certainly the leadership focused on terrorism issues had at his or her desktop access to an unclassified network and the Internet, a secret level network, and a top secret level network.

So I think that was a dramatic improvement from the state of things prior to 9/11, and I think the country has Director Mueller to thank for focusing just relentlessly on that issue, as you note, and from your focus on the issue. And I know you focused on the development of the Sentinel program over a number of years. Because of that focus, he was able to move things.

I would say that we are not where we need to be and the proliferation of data bases and the need to share travel information with immigration information, with criminal information, is a continuing challenge because of the legal rules that are applied to those different sets, and the privacy protections that we have to be very mindful of with regard to U.S. person information.

But I think it is something we have to be constantly focused on

and to build on the progress that has been made.

Senator DURBIN. The last question I have relates to the other side of that equation. Once the technology is there, the question is whether the cultures of the agencies will allow them to share information.

As hard as it may be to believe, as the intelligence community looked into 9/11, we found a lot of good information that was not shared because of the belief that it somehow could jeopardize the career of the person sending it or it should stay within the agency, and I hope that we are moving beyond that.

Certainly, the position you aspire to is one that was designed to move beyond that. What has been your experience in terms of this culture? Is it still stovepiped, to use that old cliche, or is it getting better?

Ms. Monaco. I think it's getting better, to a significant degree. My personal experience is that every morning, as I mentioned in my statement, agents and analysts and prosecutors all sit together to review the same information. That is something that didn't happen before 9/11.

That same meeting is occurring everywhere around the government in different agencies, at State Department, at Homeland Security. So you have the same people looking at the same information and that is a critical development.

In the National Security Division, you have—and the very purpose of it was to have intelligence lawyers sitting next to criminal prosecutors, those with law enforcement authorities, and working with agents and investigators. That didn't happen before Congress had the wisdom of creating the National Security Division.

So now, every day, the people who are looking at the FISAs and the people who are looking at somebody, a terrorism or espionage target, for a potential prosecution are sitting side-by-side.

Senator DURBIN. Thank you, Ms. Monaco.

Thank you, Mr. Chairman.

Senator Franken. Thank you, Senator.

Ms. Monaco, first of all, let me say that our office has received no shortage of calls from people in the law enforcement community who have been effusive in praising you and your nomination, and your family should be proud of where you are today.

Ms. Monaco. Thank you, Mr. Chairman.

Senator Franken. I was really impressed with your work on the Enron scandal and I understand that you earned the—I guess Senator Brown said that—you earned the Department of Justice's highest award for your work on the Enron task force.

I realize the position you are nominated to would not be involved in Enron-type investigations or prosecutions, but if someone interested in protecting everyday Americans from corporate malfeasance, I want to know what you think lessons learned are from the Enron scandal.

Ms. Monaco. Senator, I think from the perspective of individuals who the Enron task force prosecuted, I think the lessons were that individuals created very complicated structures and that there was a very high appetite for risk in that corporation, and that led the leaders of that organization and others to conduct a number of transactions that created a fictional picture, if you will, of what the actual corporation was doing.

And I think with the reforms that Congress enacted after that, Sarbanes-Oxley and the like, we have a much better regime in

place to prevent that. But I don't think we're done.

From an investigative standpoint, it's actually somewhat similar to the position I'm going to now, which is, if I am confirmed, the focus by investigators on pieces of information and connecting it and taking a complex situation and simplifying it down to its essence was the point of the prosecution of Enron, and I think some parallels can be made in the national security realm.

Senator Franken. Well, thank you, Ms. Monaco.

We will now proceed to the third and final panel of this afternoon's hearing. You are excused. Thank you very much.

Ms. Monaco. Thank you, Mr. Chairman.

Senator Franken. Would the third panel come forward and stand and raise your right hands? Now, I would like you, please, to swear the oath.

[Nominees sworn.]

Senator Franken. Please be seated. And I invite you, each of you, starting with Judge Ramos, to introduce members of your family and friends who are here today.

[The biographical information of Lisa O. Monaco follows.]

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

Lisa Oudens Monaco

2. Position: State the position for which you have been nominated.

Assistant Attorney General for National Security

3. Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530

4. Birthplace: State date and place of birth.

February 1968, Boston, Massachusetts

 Education: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

University of Chicago Law School 1994 –1997 J.D., June 1997

United States Department of Agriculture 1991 (evening course in economics)

Harvard University 1986 -1990 B.A., June 1990

6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation

from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

United States Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530 Principal Associate Deputy Attorney General (Feb. 2010- present) (Acting, Feb. 2010-Jan. 2011) Associate Deputy Attorney General (Jan. 2009-Feb. 2010)

Federal Bureau of Investigation 935 Pennsylvania Avenue, NW Washington, DC 20535 Chief of Staff (Sept. 2007-Jan. 2009) Deputy Chief of Staff and Counselor (April 2007-Sept. 2007) Special Counsel to the Director (on detail, Jan. 2006-April 2007)

Enron Task Force
United States Department of Justice
1400 New York Avenue, NW
Washington, DC 20530
Assistant United States Attorney (on detail) (May 2004-Jan. 2006)

United States Attorney's Office for the District of Columbia 555 4th Street, NW Washington, DC 20001 Assistant United States Attorney (Jan. 2001-April 2007)

United States Department of Justice Office of the Attorney General 950 Pennsylvania Avenue, NW Washington, DC 20530 Counsel (Nov. 1998-Jan. 2001)

The Honorable Jane R. Roth United States Court of Appeals for the Third Circuit 844 King Street Wilmington, DE 19801 Law Clerk (Sept. 1997-July 1998)

The Chicago Law Foundation
University of Chicago Law School
1111 E 60th St
Chicago, Illinois 60637
(scholarship organization that funded summer work by law students in the public interest)
Treasurer (1995-1997)

Hogan and Hartson, LLP 555 13th St., NW Washington, DC 20005 Summer Associate (June 1996-September 1996)

White House Counsel's Office The White House 1600 Pennsylvania Avenue, NW Washington, DC 20500 Summer Intern (July 1996 – August 1996)

United States Department of Justice Office of Legislative Affairs 950 Pennsylvania Avenue, NW Washington, DC 20530 Summer Intern (July--September 1995)

The Honorable Wendell P. Gardner Superior Court of the District of Columbia 500 Indiana Avenue, NW Washington, D.C. 20001 Summer Intern (June-July 1995)

United States Senate Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510 Research Coordinator (June 1992-September 1994)

Health Care Advisory Board Watergate Office Complex Washington, DC 20005 Senior Associate (June 1991-June 1992)

The Wilson Quarterly Woodrow Wilson International Center for Scholars Smithsonian Institution 370 L'Enfant Plaza Washington, DC 20024 Research Assistant (July 1990-July 1991)

Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

I have never served in the military. I was not required to register for the selective service.

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Editor-in-Chief, University of Chicago Law School Roundtable, Sept. 1996-June 1997 Attorney General's Award for Exceptional Service, September 12, 2006 Department of Justice Awards for Special Achievement (September 2002; August 2003; December 2005) Elizabeth Cary Agassiz Certificate of Merit, Harvard College

 Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Member, New York Bar, April 14, 1998 to present (no office held).

I may have had a brief membership to the American Bar Association in approximately 2007 (no office held).

10. Bar and Court Admission:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

April 14, 1998, New York Bar. I have had no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Third Circuit, May 18, 1998 United States Court of Appeals for the District of Columbia Circuit, May 29, 2001

I believe the above admissions have lapsed because I have had no occasion to practice in those courts since 2004.

I also appeared frequently before the Court of Appeals for the District of Columbia in 2001 in connection with my work in the Appellate Division of the United States Attorney's Office. I do not believe I was required to acquire separate admission to that court. Similarly, as an Assistant United States Attorney I appeared regularly in the United States District Court for District of Columbia

from 2003 to 2004 and in the United States District Court for the Southern District of Texas from 2004 to 2006. I do not believe I was required to be admitted before these courts.

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Edward Bennett Williams Inn of Court, Associate-at-Large, 2002-present Washington Sports Club, circa 1990-present

I may have had a free membership in the Harvard Club shortly after graduation from college. In addition, I may briefly have been a member of the Harvard Club of Washington, D.C., when I moved here in 1990. I cannot locate any records of those memberships.

I have made financial contributions over the years to the schools I have attended. I may have made financial contributions to charitable organizations over the years. I have not included in the list above any organizations to which I gave funds and did not otherwise participate in programmatic activities.

b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Not that I am aware of.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have done my best to identify all books, articles, reports, letters to the editor, editorials and other published material, including through a review of my personal files and searches of electronic databases. Despite my searches, there may be

other materials I have been unable to identify, find or remember. I have located the following:

Give the People What They Want: The Failure of Responsive Lawmaking, The University of Chicago Law School Roundtable, Vol. 3, No. 2 (1996). (Law School note)

b. Supply four (4) copies of any reports, mcmoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None, although as a staff assistant to the Senate Judiciary Committee from 1992-1994 I provided research assistance to a number of committee reports issued by the Chairman.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify speeches or talks I have given by reviewing my calendars, personal files and publicly available electronic databases, although there may be some I do not recall that I have not been able to find.

Seminar on Domestic Preparedness, Harvard University. In October, 2000, I spoke to a small seminar at the John F. Kennedy School of Government. No transcript is available.

Edward Bennett Williams Inn of Court, "Let's Make a Deal – How to deal with the prosecution in white collar cases." I was part of a panel discussion. October 17, 2002. No notes or transcript available.

American Bar Association, Young National Security Lawyers. I was part of a panel discussion on the "law of leaks" and media leak legislation. I cannot recall the precise date but believe it was in the spring of 2004. No notes or transcript available.

Edward Bennett Williams Inn of Court, Electronic Evidence. I was a panelist for a discussion of electronic evidence in criminal prosecutions. I cannot recall the precise date but I believe this was in the spring of 2004. No notes or transcript available.

Federal Bureau of Investigation, All Employee Conference, Indianapolis, Indiana Field Office of the FBI. I gave a presentation to assembled agents and employees on the investigation and subsequent prosecutions arising from the collapse of the Enron Corporation. November 2, 2006. A copy of the presentation is attached.

American Bar Association Annual Meeting, Media, Privacy and Defamation Law Committee Litigation Committee, San Francisco, California. I was part of a panel discussion about the FBI and balancing national security and civil liberties. August 11, 2007. A copy of the presentation is attached.

KWA Women's Speakers Series, The Belmont Hill School, Belmont, Massachusetts. I spoke about the FBI after 9/11. November 8, 2007. Notes attached.

National Security Fellows Program, John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts. I was a guest speaker for a meeting of government officials participating in the Kennedy School's National Security fellows program. November 9, 2007. Notes attached.

American Bar Association, Litigation Section Leadership Meeting, San Diego, California. I was part of a panel discussion on national security issues. January 2008. No notes or transcript are available. My recollection is that I addressed topics similar to those listed above regarding the FBI's role as an intelligence-focused national security organization.

Securities Enforcement Coordination Conference, Securities and Exchange Commission. I was a panelist with other prosecutors and SEC lawyers to discuss parallel proceedings in white collar cases. March 11, 2008. Notes attached.

YWCA, Women in Power Speakers Series, PaIm Beach, Florida. I spoke about women in careers in law and national security. April 22, 2008. Remarks attached.

Women in International Regulatory Law Symposium, "Challenges in International Security," I was part of a panel discussion regarding international security issues. June 18, 2008. Notes attached.

American Bar Association, Criminal Justice Section, Third Annual National Institute on Securities Fraud, "Subprime Meltdown: Reactions and Actions by the SEC and DOJ." Arlington, Virginia. I was part of a panel discussion on the Department's response to the subprime meltdown. October 2, 2008. Notes attached

American University, International Studies Course, Washington, D.C. I was a guest speaker for a college-level international studies course. October 28, 2008. Notes attached.

Women's White Collar Bar Luncheon, Patton Boggs, LLP, Washington, DC. I gave brief remarks and fielded questions about the Department's priorities. January 26, 2010. Notes attached.

Edward Bennett Williams Inn of Court, Lessons from Guantanamo. I introduced the panelists. February 18, 2010. Notes attached.

Fordham Law School, Evidence Course, New York, New York. I was a guest speaker along with the General Counsel of the FBI at a first-year evidence class. We fielded questions about national security issues and careers in the Department of Justice and the Federal Bureau of Investigation. April 19, 2010. Notes attached.

Practicing Law Institute, Enforcement 2010: Multi-Agency Enforcement Efforts in the New Decade, New York, New York. I was part of a panel discussion about dealing with enforcement agencies. June 1, 2010. A webcast of this panel is available at:

http://www.pli.edu/Content.aspx?dsNav=Ny:True,Ro:0,N:4294963167-167&ID=72109

Georgetown Law School, Legislation Course, September 21, 2010. I was a guest speaker regarding my experiences working in different branches of government. Notes attached.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

In the summer of 2008, I was interviewed by Garrett Graff for a two-part series regarding the FBI and Director Mueller that ran in the Washingtonian magazine in

August and September of 2008. Copies of the articles are attached. (This series spawned a book project by the author. Information from this interview and others has been included in that book which has just recently been published. *Threat Matrix: The FBI at War in the Age of Global Terror*, Garrett Graff, Little Brown, 2011. A copy of the excerpts in which I am quoted is attached).

In June 2007, I was interviewed by Richard G. Jones of the *New York Times*, in connection with a profile of the incoming Attorney General of New Jersey, Anne Milgram. That profile appeared on June 21, 2007. A copy of the article is attached.

I was interviewed by a reporter from the *Denver Post* in connection with a profile of Cliff Stricklin, one of my co-counsel on the Enron Task Force. That profile appeared on March 11, 2007, "NACCHIO ON TRIAL," Greg Griffin, *Denver Post*, March 11, 2007. A copy of the article is attached.

In January 2006, I was interviewed by John Roper of the *Houston Chronicle*, in connection with a profile of Kathryn Ruemmler of the Enron Task Force that appeared in that paper on January 29, 2006. A copy of the article is attached.

13. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never been a candidate for public office, although as listed in answer to Q6., I have held a number of positions in the federal government.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

14. Legal Career: Answer each part separately.

 Describe chronologically your law practice and legal experience after graduation from law school including:

9

 i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to The Honorable Jane R. Roth, United States Court of Appeals for the Third Circuit. September 1997-June 1998.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

United States Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530 Principal Associate Deputy Attorney General Acting Principal Associate Deputy Attorney General Associate Deputy Attorney General January 2009-present

Federal Bureau of Investigation 935 Pennsylvania Avenue, N.W. Washington, DC 20535 Chief of Staff to the Director Deputy Chief of Staff and Counselor Special Counsel to the Director (on detail) January 2006-January 2009

Enron Task Force
United States Department of Justice
1400 New York Avenue, NW.
Washington, DC 20530
Assistant United States Attorney (on detail)
May 2004-January 2006

United States Attorney's Office for the District of Columbia 555 4th Street, NW Washington, DC 20001 Assistant United States Attorney January 2001-April 2007 United States Department of Justice Office of the Attorney General 950 Pennsylvania Avenue, NW Washington, DC 20530 Counsel to the Attorney General November 1998-January 2001

United States Court of Appeals for the Third Circuit The Honorable Jane R. Roth 844 King Street Wilmington, DE 19804 Law Clerk September 1997-June 1998

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

 the general character of your law practice and indicate by date when its character has changed over the years.

From September 1998 to January 2001, I was Counsel to the Attorncy General and provided information and staff assistance on a range of criminal justice issues. From 2001 to the present, I have continued to serve in the Department of Justice primarily as a prosecutor and then as an advisor and supervisor of national security, law enforcement and litigation matters.

 your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

I have served one client throughout my legal career: the United States.

The areas in which I have specialized are national security, criminal prosecution and law enforcement.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.
 - i. Indicate the percentage of your practice in:
 - 1. federal courts;

1998-2001: 0% 2001-2003: 0% 2003-2011: 100%

2. state courts of record; 1998-2001: 0% 2001-2003: 100% 2003-2011: 0%

other courts;None

4. administrative agencies None

ii. Indicate the percentage of your practice in:

1. civil proceedings; 1998-2009: 0% 2009-2011: 25%

 criminal proceedings. 1998-2009: 100% 2009-2011: 75%

From 1998-2001, while serving as Counsel to the Attorney General, I provided staff assistance on criminal justice, national security and congressional oversight matters and did not appear in court. When I became an Assistant United States Attorney (AUSA) in 2001, all of my work was in the criminal arena. For approximately four years, I appeared in court often on a daily basis in the District of Columbia Superior Court and United States District Court in the District of Columbia. In 2004, I was detailed to the Department of Justice's Criminal Division and the Enron Task Force. During the investigation and subsequent trials of several Enron executives I appeared in court or the grand jury frequently, including a three-month trial in Federal court in Houston, Texas. During my career as an AUSA, my practice was roughly split between Superior Court in the District of Columbia and Federal court matters.

During 2006-2009, while I was at the FBI, my work did not often involve litigation and I did not have occasion to appear in court. In 2009, I began work as an Associate Deputy Attorney General and assisted in the supervision of federal criminal and civil matters related to national security (as well as criminal and other matters) but I did not have direct responsibility for any cases and did not appear in court. In 2010, I began work as Acting Principal Associate Deputy Attorney General and now serve permanently in that position. I supervise the staff of lawyers in the Office of the Deputy Attorney General and assist the Deputy Attorney General in overseeing the operations of the Department.

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
 - i. What percentage of these trials were:
 - 1. jury;
 - 2. non-jury.

I have tried approximately 15 jury trials to verdict. I was sole counsel in all but approximately five of these cases. In those five cases, I worked with one other prosecutor, with the exception of one case in which I was co-counsel with two other prosecutors.

During my time in the United States Attorney's Office for the District of Columbia and the misdemeanor section of that office, I tried many non-jury cases to verdict. The majority of misdemeanor cases were resolved by plea or bench trial. I do not recall how many bench trials I tried to verdict, but I would estimate 30-40.

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

- 15. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - a. the date of representation;
 - the name of the court and the name of the judge or judges before whom the case was litigated; and
 - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

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 U.S. v. Joseph Hirko; Scott Yeager; Rex Shely; Michael Krautz and Kevin Howard Southern District of Texas (4:03CR00093) Judge Vanessa Gilmore April 2005-July 2005

Defendants were five executives of Enron's Broadband business unit who were charged with conspiracy to commit securities and wire fraud, insider trading, and money laundering in connection with misrepresentations to the investing public about the progress and success of the Enron "intelligent network." The investigation and prosecution was part of the Enron Task Force's investigation into the collapse of Enron stemming from the December 2001 bankruptcy of that corporation. I was co-lead counsel in a three-month trial after which the jury was unable to reach a verdict on a majority of the charges. In 2005, my co-counsel and I reindicted the defendants in three indictments. After I left the Task Force, a number of defendants pleaded guilty or were retried.

In 2008, the lead defendant (Hirko) pleaded guilty to wire fraud. He received a 16-month sentence and was ordered to pay more than \$8 million in restitution and forfeiture. In 2010, defendant Shelby pleaded guilty to insider trading. He agreed to forfeit more than \$2 million in proceeds and is awaiting sentencing. Defendants Krautz and Howard were retried in 2006. At retrial, Howard was convicted of fraud, conspiracy and falsifying books and records. Krautz was acquitted. Howard moved to vacate his convictions based on United States v. Brown, 459 F.3d 509 (5th Cir. 2006), cert. denied, 127 S.Ct. 2249 (2007), which clarified the meaning of "honest services" fraud. The district court vacated the convictions (471 F.Supp.2d 772), and the Fifth Circuit affirmed (517 F.3d 731). In 2009, Howard pleaded guilty to one count of falsifying books and records and was sentenced to one year of probation. Defendant Yeager challenged the November 2005 superseding indictment on collateral estoppel and double jeopardy grounds. The district court denied his motion to dismiss the superseding indictment (446 F.Supp.2d 719) and the Fifth Circuit affirmed (521 F.3d 367). In 2009, the Supreme Court granted certiorari, reversed and remanded, finding that the jury's inability to reach verdicts on insider trading counts was a "nonevent" for purposes of determining the issue-preclusive effect of the acquittals. (129 S.Ct. 2360).

Co-Counsel:

Benton Campbell
Former AUSA on the Enron Task Force
Currently, Partner at Latham & Watkins, 885 Third Avenue, New York, New York, 10022, 212-906-1200;

Cliff Stricklin
Former AUSA on the Enron Task Force
Currently, Partner at Holme Roberts and Owen LLP, 1700 Lincoln Street, Suite
4100, Denver, CO 80203, 303-866-0372.

Counsel for Defendants:

Defendant Hirko was represented by:

Per Ramjford, Partner, Stoel Rives, LLP, 900 SW Fifth Street, Suite 2600, Portland, OR 97204, 503-294-9257); and David Anjali, Anjali Law Group, LLC, 121 SW Morrison Street, Suite 400, Portland, OR 97204, 503-954-2232

Defendant Yeager was represented by:

JA "Tony" Canales, Canales and Simonson, PC, 2601 Morgan Avenue, PO Box 5624, Corpus Christi, TX 78405, 361-883-0601

Defendant Shelby was represented by:

Edwin J. Tomko and Jason Ross, Curran Tomko Tarski, LLP, 2001 Bryan Street, Suite 2000, Dallas, TX 75201, 2174-270-1405

Defendant Krautz was represented by:

Barry J. Pollack, Partner, Miller & Chevalier, 655 Fifteenth Street, NW, Suite 900, Washington, DC 20005, 202-626-5830

Defendant Howard was represented by:

Jack B. Zimmerman and Jim E. Lavine, Zimmerman and Lavine, 770 S. Post Oak Lane, Suite 620, Houston, TX 77056, 713-552-0300

<u>United States v. Kevin Hannon</u>
 Southern District of Texas
 Judge Vanessa Gilmore
 August 2004

The defendant was the Chief Operating Officer of the Enron Broadband business unit. In August 2004, I negotiated a plea agreement with the defendant in which he pleaded guilty to conspiracy to commit wire and securities fraud and agreed to testify in subsequent trials for the Enron Task Force. He was sentenced to 24 months incarceration.

Counsel for Defendant:

Reid Figel, Partner, Kellogg, Huber, Hansen, Todd, Evans and Figel, 1615 M Street, NW, Suite 400, Washington, DC 20036, 202-326-7918

3. <u>United States v. Ken Rice</u> Southern District of Texas Judge Vanessa Gilmore July 2004 The defendant was the Co-Chief Executive Officer of the Enron Broadband business unit. He was indicted in 2003 for conspiracy to commit securities and wire fraud, insider trading and money laundering. In July 2004, my co-counsel and I negotiated a plea agreement with defendant Rice in which he pleaded guilty to securities fraud and agreed to testify as a cooperating witness in subsequent Enron Task Force prosecutions. He was sentenced to 27 months of incarceration and ordered to forfeit approximately \$15 million to the victims of the Enron fraud.

Co-counsel:

Benton J. Campbell, Partner, Latham & Watkins,885 Third Avenue, New York, New York, 10022, 212-906-1200;

Counsel for Defendant:

William D. Dolan, III, Venable LLP, 8010 Towers Crescent Drive, Suite 300, Vienna, VA 22182, 703-760-1680.

 United States v. Jeffrey K. Skilling and Kenneth Lay Southern District of Texas
 C.R. No. H-04-25 (S-2); Judge Simeon P. Lake December 2005-January 20006

I worked on certain pre-trial litigation matters but was not a part of the trial team for this case. My involvement in pretrial litigation included work on the government's motion to preclude certain expert testimony and to provide for additional disclosure from the defense. In addition, I litigated the government's response to the defendants' motion to preclude the government from introducing evidence of defendants' fraudulent trading strategies and market manipulation by Enron traders in California. Although the government lost that motion, it was significant because it highlighted Enron's practice of generating profits from fraudulent strategies and concealing those profits using reserve accounts. This was a strategy employed in the overall conspiracy to misrepresent the true state of Enron with which the defendants were charged.

Attorneys for the Government:

Sean Berkowitz, former Director, Enron Task Force, currently, Partner, Latham and Watkins, LLP, 233 South Wacker Drive, Suite 5800, Chicago, IL, 60606, 312-777-7016; Kathryn H. Ruemmler, former Deputy Director, Enron Task Force, currently, Principal Deputy White House Counsel, The White House, Washington, DC, 202-456-1256; John Hueston, former AUSA, Enron Task Force, currently, Partner, Irell & Manella, 1800 Avenue of the Stars, Suite 900, Los Angeles, CA, 90067, 310-277-1010; Cliff Stricklin, former AUSA, Enron Task Force, currently Partner, Holme Roberts and Owen LLP, 1700 Lincoln Street, Suite 4100, Denver, CO 80203, 303-866-0372;

J. Douglas Wilson, Deputy Criminal Chief, U.S. Attorney's Office for San Francisco, 450 Golden Gate Avenue, San Francisco, CA 94102, 415-436-6778.

Counsel for Defendants:

Dan Petrocelli, Partner, O'Melveny and Myers, LLP, 1999 Avenue of the Stars, Suite 200, Los Angeles, CA 90067, 310-553-6700; Mark Holscher, Partner, Kirkland & Ellis, 777 S. Figueroa, Los Angeles, CA 90017, 213-680-9180; Chip Lewis, 2120 Welch St., Houston, TX 77019, 713-523-7878.

United States v. Obafemi Orenuga
 United States District Court for the District of Columbia No. 03-464
 March 2004
 430 F.3d 1158 (D.C.Cir. 2005)
 Judge John Bates

Defendant was a tax auditor for the District of Columbia Office of Tax and Revenue. He was convicted at trial for receiving bribes in exchange for reducing the tax liability of local businesses. He was sentenced to 24 months of incarceration.

Co-counsel:

Julienne Himelstein, Assistant United States Attorney, U.S. Attorney's Office for the District of Columbia, 555 Fourth Street, NW, Washington, DC, 20001, 202-252-7957.

Counsel for Defendant:

Edward C. Sussman, 601 Pennsylvania Avenue, NW, Suite 900, Washington, DC 20004, 202737-7110.

6. United States v. Reginald Steward

No. 03-CF-393 Superior Court of the District of Columbia Criminal Division Judge Erik P. Christian April 2003

Defendant was convicted of unlawful distribution of heroin after a jury trial. The government utilized expert testimony regarding the practice of drug distribution operations and eye witness testimony. The defendant was sentenced to 27 years incarceration with all but 180 months sentence suspended.

Counsel for the defendant:

Walter Booth, 4550 Montgomery Avenue, Suite 601, North Bethesda, MD 20814.

7. United States v. William Mayo

No. F-6976-02 Superior Court of the District of Columbia Criminal Division Judge Russell Canan February 2003

Defendant was charged with armed robbery and possession of a firearm during the commission of a crime of violence. The defendant was acquitted. The matter was significant because it involved litigation over expert testimony regarding eyewitness identification by the sole witness/victim to the armed robbery.

Counsel for the Defendant:

Cynthia Katkish, 601 Pennsylvania Avenue, NW, 900 South pmb 221, Washington, D.C. 20004

8. <u>United States v. Didiar Velasquez</u> 801 A.2d 72 (D.C. 2002) District of Columbia Court of Appeals

Chief Judge Wagner, Judge Schwelb, and Judge Farrell

I briefed and argued this appeal involving a defendant who was convicted of assault with intent to commit first-degree sexual abuse and threatening to injure a person. The case arose out of an incident in which the defendant assaulted the complaining witness who was babysitting her three-year old cousin. The defendant argued that his conviction should be reversedbecause the trial court violated his Sixth Amendment right to confront the witness against him by precluding his cross examination of the complaining witness about her mental illness following the assault. The Court of Appeals affirmed.

Counsel for the Defendant:

Donald Dworsky, 7307 Macarthur Boulevard, Bethesda, MD, 20816, 301-229-1904.

United States v. Ricardo Riley 790 A.2d 538 (D.C. 2002) District of Columbia Court of Appeals Judges Steadman, Glickman and Belson

I briefed and argued this appeal involving a defendant who was convicted of armed robbery. The defendant argued that the trial court erred permitting the government to

introduce evidence of other crimes to demonstrate his intent to aid and abet another in the commission of the robbery. The Court of Appeals affirmed.

Counsel for the Defendant:

Kali Bracey, formerly of Public Defender Service, now with Jenner & Block, 1099 New York Avenue, NW, Suite 900, Washington, DC, 20001, 202-639-6871.

 United States v. Jose Chavez-Quintanilla 788 A.2d 564 (D.C. 2002)
 District of Columbia Court of Appeals Judges Terry, Ruiz and Pryor

I briefed and argued this appeal involving a defendant who was convicted of possession of cocaine and marijuana with intent to distribute. On appeal the defendant challenged the basis for the search of the convenience store that was being used as a front for drug distribution in a District of Columbia neighborhood. In particular, the defendant challenged the use of confidential source information as a basis for an affidavit establishing probable cause for the search. The Court of Appeals affirmed.

Counsel for Defendant:

Manuel Retureta, Retureta & Wassem, PLLC, 1614 20th Street, NW, Washington, DC, 20009, 202-450-6119.

4. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

From September 1998 to January 2001, I was Counsel to the Attorney General and I provided information, advice and staff assistance on a range of criminal justice, law enforcement, national security and oversight matters. I was not engaged in litigation.

In January 2001, I joined the United States Attorney's Office for the District of Columbia as an Assistant United States Attorney and thereafter worked as a prosecutor. I served in the Appellate Section and in the Superior Court Misdemeanor, Felony Trial and Grand Jury Sections as well as the Criminal Division's Fraud and Public Corruption Section. In Superior Court my practice consisted of representing the United States in criminal appeals to the District of Columbia Court of Appeals and the Court of Appeals for the District of Columbia Circuit, and conducting grand jury investigations and prosecuting

drug and gun-related offenses and other violent crimes. In Federal District Court, my practice consisted of investigating and prosecuting cases of public corruption and fraud. In 2004, I began a detail to the Department of Justice Criminal Division and the Enron Task Force. I served as a prosecutor (on detail) to the Enron Task Force to investigate and prosecute the fraud associated with the collapse of Enron.

In January 2006, I began another detail as an Assistant United States Attorney serving as Special Counsel to the Director of the Federal Bureau of Investigation. As Special Counsel to the Director, I provided advice and guidance on a range of national security and law enforcement matters. I did not appear in court in this job.

In April 2007, I became Deputy Chief of Staff and Counselor to the Director and then Chief of Staff at the Federal Bureau of Investigation. During this time I ran the day-to-day operations of the Director's office and provided advice and guidance on national security operations and investigations as well as on criminal and law enforcement matters. I also assisted in the management and oversight of the National Security Branch of the FBI (which is responsible for counterterrorism and counterintelligence investigations) and in the development of the intelligence capability of the FBI. I assisted the Director of the FBI and other senior executives in advancing the transformation of the FBI into a threat-based, intelligence-driven national security organization. In this capacity, I had regular interaction with representatives of the Intelligence Community, the President's Foreign Intelligence Advisory Board, and congressional staff.

In 2009, I became an Associate Deputy Attorney General. During this period I assisted the Deputy Attorney General in the management of the national security functions of the Department including the National Security Division and the Federal Bureau of Investigation. On behalf of the Deputy Attorney General, I assisted in the supervision of significant investigations and prosecutions to disrupt national security threats. I worked regularly with prosecutors and agents on issues relating to counterterrorism and counterintelligence investigations and prosecutions but I did not have direct responsibility for any cases. From time to time, I briefed senior officials on pending investigations, prosecutions and national security policy matters. My work also involved representing the Department at the National Security Council and in interagency meetings with counterparts from the Departments of Defense, State, Central Intelligence Agency, and the Office of the Director of National Intelligence and other agencies on a range of issues concerning law enforcement investigations, intelligence collection, and detention policy.

For the past year I have served as the Principal Associate Deputy Attorney General (first in an acting capacity). In this role, I have had responsibility for management of the staff of lawyers in the Deputy Attorney General's Office who assist the Deputy Attorney General in conducting management of the Department. I have assisted the Deputy Attorney General in oversight of a range of litigation, policy, and operational matters. These matters range from significant national security investigations and operations to criminal prosecutions and civil litigation.

5. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have never taught a course. I have been a guest speaker on a few occasions at one college and two law schools as described in 12 d. above.

6. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am invested in the Government's Thrift Savings Plan.

 Outside Commitments During Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

No.

8. <u>Sources of Income</u>: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

Please see SF-278.

 Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see attached Net Worth Statement,

10. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise. I serve as the trustee or trust protector of trusts created for the benefit of a niece and nephew and one trust for the benefit of a friend's children. I do not have a vested interest in any of those trusts, and my role will cease if I am confirmed as Assistant Attorney General.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

11. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Since I joined the Department of Justice, I have not had the opportunity to represent anyone other than the United States. From time to time I have spoken to law school and college classes regarding careers in the law and national security.

During law school, I served in the Mandel Legal Aid Clinic at the University of Chicago Law School representing indigent clients in the Law School's mental health clinic. I performed this work during my second and third years of law school. Also during law school I served as the treasurer of a public interest scholarship fund that enabled law students to do work in the public interest during the summers.

Lisa Monaco

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS	LIABILITIES						
Cash on hand and in banks	54	342	.12	Notes payable to banks-secured		L	0
U.S. Government securities-add schedule			0	Notes payable to banks- unsecured			0
Listed securities-add schedule See Schedule A	13	316	.72	Notes payable to relatives			0
Unlisted securitiesadd schedule			0	Notes payable to others			0
Accounts and notes receivable:			0	Accounts and bills due			0
Due from relatives and friends			0	Unpaid income tax			0
Due from others			0	Other unpaid income and interest			0
Doubtful			0	Real estate mortgages payable- add schedule - See Schedule C	286	744	69
Real estate owned-add schedule See Schedule B	430 est	000	.00	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts-itemize:			
Autos and other personal property	5 est	000	.00	See Schedule D			
Cash value-life insurance			0	Home Equity Loan	9	230	.99
Other assets itemize:				Car Loan	18	282	.51
Retirement Account	208	064	.46				
Fidelity IRA Account	13	567	.45				
Unpaid Leave: Est.	32 est	000	.00	Total liabilities	314	258	.19
				Net Worth	442	032	.56

Total Assets	756	290	.75	Total liabilities and net worth	756	290	.75
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			0	Are any assets pledged? (Add schedule)No			0
On leases or contracts			C	Are you defendant in any suits, or legal actions? No			0
Legal Claims			0	Have you ever taken bankruptcy? No			0
Provision for Federal Income Tax			0				
Other special debt			0				

Lisa Oudens Monaco Net Worth Statement

Schedule A

Listed Securities

Fidelity Equity Income II Account (Mutual Fund)

Market Value

\$13,316.72

Schedule B

Real Estate Owned

Market Value

1736 18th Street, NW, #301 Washington, DC 20009

\$430,000.00 (purchased in 2004)

Schedule C Real Estate Mortgage Payable HSBC Mortgage

Value \$286,744.69

Schedule D Other Debts HSBC Home Equity Loan

Value \$ 9,230.99

Car Loan: Audi Financial Services (3 ½ year lease, payable in monthly installments of \$489/mo.)

\$18,282.51

STATEMENT OF HON. NELVA G. RAMOS, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

Judge RAMOS. Thank you, Senator Franken, for the opportunity to be here.

With me today is my husband, Oscar Ramos.

Senator Franken. Hello.

Judge RAMOS. Our son, Christian.

Senator Franken. Welcome, Christian.

Judge RAMOS. My sister, Norma Stachura.

Senator Franken. How do you do?

Judge RAMOS. Our friends, Caroline Bertuzzi, the honorable Rose Vela and her husband, Fil Vela. And I thank them for being here today.

If I could thank Senator Hutchison and Senator Cornyn for their kind introduction, and I'd like to thank them, as well as former Congressman Solomon Ortiz, for their support through this process. And I thank the President for his nomination.

If I could briefly acknowledge my brothers and sisters and other family and friends who are watching through the Webcast. I thank them for their support. And acknowledge my mother-in-law, Alicia Ramos, for her support. And, finally, acknowledge my parents, Felipe and Isabel Gonzales. It is because of them that I am living the American dream.

I thank my mother for her tremendous support through the years. My father is no longer with us. I know he is here in spirit and is looking down on these proceedings from above.

Thank you, Senator Franken, and I welcome your questions.

Senator Franken. Thank you, and hello to everyone watching on the Webcast.

Judge Jackson.

[The biographical information of Nelva G. Ramos follows.]

108

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

Nelva Gonzales Ramos; Nelva Gonzales

2. Position: State the position for which you have been nominated.

United States District Judge for the Southern District of Texas

 Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

901 Leopard Street #804 Corpus Christi, Texas 78401

4. Birthplace: State date and place of birth.

1965; Port Lavaca, Texas

 Education: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1988 – 1991, University of Texas School of Law; J.D. (with Honors), 1991 1983 – 1988, Southwest Texas State University; B.S. (summa cum laude), 1987; Legal Assistant Certificate, 1988 Summer 1985, 1986 – The Victoria College; no degree received

6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2001 – present State of Texas/Nucces County 901 Leopard Street Corpus Christi, Texas 78401 District Court Judge – 347th Judicial District 1999 – 2000 Law Offices of Nelva Gonzales Ramos 616 South Tancahua Street Corpus Christi, Texas 78401 Solo Practitioner

1997 – 1999 City of Corpus Christi 120 North Chaparral Street Corpus Christi, Texas 78401 Municipal Court Judge

1991 – 1997 Meredith, Donnell & Abernethy 555 North Carancahua Street #400 Corpus Christi, Texas 78478 Attorney

Spring 1991 Texas Supreme Court Justice Lloyd Doggett 201 West 14th Street, Room 104 Austin, Texas 78701 Intern

Summer 1990 Meredith, Donnell & Abernethy 555 North Carancahua Street #400 Corpus Christi, Texas 78478 Law Clerk

Summer 1989 Atlas & Hall 818 Pecan Boulevard McAllen, Texas 78501 Law Clerk

1987 – 1988 Southwest Texas State University College of Education – Bilingual Department 601 University Drive San Marcos, Texas 78666 Student Secretary Spring 1988 Southwest Texas State University University Attorney 601 University Drive San Marcos, Texas 78666 Intern

Summer 1988 Calhoun High School 201 Sandcrab Boulevard Port Lavaca, Texas 77979 Teacher's Aide

Other Affiliations (uncompensated, unless otherwise indicated)

2001 - present Nueces County Juvenile Board 901 Leopard Street Corpus Christi, Texas 78401 Board Member (receive stipend)

2005 – 2007 Council on Alcohol & Drug Abuse – Coastal Bend 1801 South Alameda Street, Suite 150 Corpus Christi, Texas 78404 Board Member (2005 – 2006) Vice President (2006 – 2007)

1999 – 2005 National Conference for Community & Justice 4541 Everhart Road Corpus Christi, Texas 78411 Board Member (1999 – 2001) Vice Chair (2002 – 2003) Chair (2003 – 2004) Past Chair (2004 – 2005)

2000 – 2001 Hispanic Women's Network of Texas, Corpus Christi chapter 7910 Galilee Circle Corpus Christi, Texas 78413 Parliamentarian/Board Member

1995 – 1996 Mexican American Bar Association (Coastal Bend) (no longer in existence) Secretary (1995 – 1996) 1994 – 1996 Corpus Christi Young Lawyers Association 555 North Carancahua, Suite 260 Corpus Christi, Texas 78478 Secretary (1995 – 1996) Board of Directors (1994 – 1996)

1993 – 1995 March of Dimes, Corpus Christi chapter 4455 South Padre Island Drive, #114 Corpus Christi, Texas 78411 Board of Directors (1993 – 1995) Chapter Counsel (1994 – 1995)

Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

I have not served in the military and have not registered for selective service.

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Highest Rated District Court Judge – Judicial Evaluation Poll (2002, 2003, 2007) Judicial Leadership Award (2003)

Las Estrellas Award - Outstanding Achievement in the Area of Law (2002)

President's Scholarship - University of Texas School of Law (1988 - 1991)

Dean's List (1983 – 1987)

Outstanding College Students of America (1988)

Pi Omega Pi (Business Education Honor Society - 1986)

Golden Key National Honor Society (1985)

Alpha Lambda Delta (National Honor Society - 1984)

Phi Eta Sigma (National Honor Society - 1984)

LULAC National Scholarship (1983)

Order of the Golden Pincher Scholarship (1983)

 Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Coastal Bend Women Lawyers Association (occasional member from 1995 – present) Corpus Christi Bar Association (1991 – present)

Liaison to Unauthorized Practice of Law Committee (2001 - present)

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Corpus Christi Young Lawyers Association (1991 – 1997)
Secretary (1995 – 1996)
Board of Directors (1994 – 1996)
Liaison to Corpus Christi Independent School District's Mentor Program (1995 – 1996)

Mexican American Bar Association (Coastal Bend) (1994 – 1996)
Secretary (1995 – 1996)

State Bar of Texas (1991 – present)
Texas Center for the Judiciary (2001 – present)
Special Events & Fundraising Committee (2009)
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10. Bar and Court Admission:

 a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

State Bar of Texas, 1991

There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court for the Southern District of Texas, 1992 Texas State Courts, 1991

There has been no lapse in membership.

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

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Coastal Bend Chapter of Texas Democratic Women (2003 – present)
Council on Alcohol & Drug Abuse – Coastal Bend (2005 – 2007)
Board Member (2005 – 2006)
Vice President (2006 – 2007)
Gulf Coast Council of La Raza Advisory Committee (1998 – 1999)
Hispanic Women's Network of Texas, Corpus Christi chapter (1999 – 2003)
Parliamentarian/Board Member (2000 – 2001)
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Leadership Corpus Christi (1998 – 1999) March of Dimes, Corpus Christi chapter (1993 - 1995) Board of Directors (1993 - 1995) Chapter Counsel (1994 - 1995) National Conference for Community & Justice, Corpus Christi chapter (1999 -2005) Chair (2003 - 2004) Vice Chair (2002 - 2003) Nueces County Bail Bond Board (2001 - 2002) Nueces County Council of Judges (2001 - present) Local Administrative Judge (2007 - 2008) Jury Selection Revision Committee (2005 - present) Local Rules Revision Committee (2005 - 2007) Nueces County Juvenile Board (2001 - present) Nueces County Purchasing Board (2007 - present) Texas Bar Foundation Fellow (2006 - present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of the organizations listed in response to 11a above currently discriminates or formerly discriminated based on race, sex, religion, or national origin.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

On May 23, 2003, I submitted a letter to the editor of the Corpus Christi Caller-Times as Incoming Chair of the National Conference for Community and Justice. Copy supplied.

On November 29, 2000, I submitted a letter to the editor of the Corpus Christi Caller-Times to thank residents who voted for me in my 347th District Court race. Copy supplied.

In 2000, while running for my judgeship, I responded to questionnaires from the League of Women Voters. Copies of the questionnaires are supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None that I can recall or have been able to identify.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

March 23, 2007: As the presiding judge of the Council of District Judges of Nueces County, I sent a letter urging state officials to oppose SB 1204/HB 2906. The officials to whom the letter was sent were Representatives Abel Herrero, Juan M. Garcia, Solomon Ortiz, Jr.; Senator Juan Hinojosa; and the state Senate Committee on State Affairs. Copies of the letter are supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have searched my files, calendars, and the internet in an attempt to respond as thoroughly as possible. Nonetheless, there may be other specches or talks that I have been unable to recall or identify.

Talks or Panel Discussions at Legal Seminars:

November 6, 2009: Advanced Personal Injury Law Seminar, Corpus Christi Bar Association, panel discussion regarding summary judgments, pretrial conferences, and civil jury trials. I have no notes, transcript, or recording. The address of the Bar Association is 555 North Carancahua Street #260, Corpus Christi, Texas 78478.

July 31, 2009: Texas Bar CLE, Advanced Civil Trial Course, Do's and Don'ts From the State Judges. Presentation slides supplied and recording available at http://www.legalspan.com/txbar/xseminars/main.asp?sServerName=www.TexasBarCLE.com&lEvent[D=9110&SeminarID=9110&IContactID=3250&sStatus=OOO.

May 28, 2009: Baseball with the Bench, Corpus Christi Young Lawyers Association, question and answer session regarding voir dire, court rules, discovery issues, and other pretrial matters. I have no notes, transcript, or recording, but Corpus Christi Bar Association coverage is supplied. The address of the Bar Association is 555 North Carancahua Street #260, Corpus Christi, Texas 78478.

April 30, 2009: Soaking Up Some CLE: A South Texas Litigation Seminar, Tips and Traps. Presentation slide supplied and recording is available at http://www.legalspan.com/txbar/xseminars/main.asp?sServerName=www.TexasBarCLE.com&lEvent/D=8865&Seminar1D=8865&IContactID=3250&sStatus=OOO.

August 1, 2007: Texas Bar CLE, Advanced Personal Injury Law Course 2007, Pattern Jury Charge. Course scenario supplied and recording available at http://www.legalspan.com/txbar/xseminars/main.asp?s.ServerName=www.TexasBarCLE.com&lEventID=7421&SeminarID=7421&lContactID=3250&sStatus=OOO.

October 2006: Advanced Personal Injury Law Seminar, Corpus Christi Bar Association, Thoughts From the Bench on How Lawyers Waste Their Own Time in Voir Dire. A copy is supplied.

Talks or Remarks to Civic Organizations, Students, and Church Groups:

October 16, 2010: Saint Patrick's Catholic Church, Women's Day Retreat, talk on peace. A copy is supplied.

April 13, 2007: Corpus Christi Young Lawyers Association Kids Law Library Dedication ceremony, Los Encinos Elementary School. I have no notes, transcript or recording, but Corpus Christi Bar Association coverage is supplied. The address of the Bar Association is 555 North Carancahua Street, Suite 260, Tower II, Corpus Christi, Texas 78478.

November 19, 2005: Northside Juneteenth Ceremony, Corpus Christi Juneteenth Coalition, remarks honoring Reverend Arthur Lane of St. Matthew Baptist Church. I have no notes, transcript or recording, but press coverage is supplied. The address of the Coalition is Coles High School & Education Center, Memorabilia Room, 924 Winnbago Street, Corpus Christi, Texas 78401.

October 16, 2004: Labor Council for Latin American Advancement Awards ceremony, remarks upon receiving an award for being a community leader. I have no notes, transcript or recording, but press coverage is supplied. The address of the Council is 815 16th Street, NW, 4th Floor, Washington, DC 20006.

February 2004: National Conference for Community and Justice Humanitarian Awards Dinner, remarks as Chair. A copy of my remarks is supplied.

2004: National Conference for Community and Justice Walk as One Lunch, remarks regarding mission and history of the organization. I do not recall the exact date or location. A copy is supplied.

2004: Teenage Mothers School, remarks to students about education. I have no notes, transcript, or recording. The address of the school is 3109 Carver Drive, Corpus Christi, Texas 78405.

April 24, 2003: American G.J. Forum Awards ceremony, Omni Bayfront Hotel. I gave brief remarks to thank the organization and my family. I have no notes, transcript, or recording, but press coverage is supplied. The address of the American G.I. Forum is N. Speer Boulevard, #103, Denver, Colorado 80211.

January 2002 and 2001: National Conference for Community and Justice Humanitarian Awards Dinner, remarks regarding mission and history of the organization. Copies of my remarks are supplied.

October 24, 2001: Learning Zone, Corpus Christi Independent School District, question and answer session regarding local government. The program was recorded at Title I Studio and aired on October 31 and November 14, 2001 on KZTV10. A DVD is supplied.

May 2001: Flour Bluff High School, Spanish National Honor Society, remarks regarding education and benefits of speaking a second language. I have no notes, transcript, or recording. The address of the school is 2505 Waldron Road, Corpus Christi, Texas 78418.

2001: Rotary Club, talk regarding jury service. I do not recall exact date or location. A copy of my remarks is supplied.

2001: Del Mar College, Criminal Justice Students, talk regarding campaigns. An outline is supplied.

2001: Substance Abuse Treatment Facility, addressed graduates who had been court ordered to the substance abuse treatment program. I discussed treatment, success, and community supervision. I have no notes, transcript, or recording. The address of the facility is 745 North Padre Island Drive, Corpus Christi, Texas 78406.

2000: G.I. Forum Scholarship Banquet, remarks regarding education. I do not recall exact date or location. I have no notes, transcript, or recording. The address of the American G.I. Forum is N. Speer Boulevard, #103, Denver, Colorado 80211.

1998: Del Mar College, Criminal Justice Students, talk regarding municipal court system. An outline is supplied.

I have spoken to other organizations and groups such as bar associations, Boy Scout troops, new attorneys, and new probation officers. However, I do not recall any specific instances, and have not maintained any written materials. Generally, I would address topics such as our system of justice, the role of a judge, rules of court, testifying in court, education, and careers.

When I campaigned for judicial office (1999 – 2000), I spoke to various civic and professional organizations such as rotary clubs, bar associations, labor unions, coffee clubs, booster clubs, Corpus Christi Police Officers Association, Fraternal Order of Police, and Leadership Corpus Christi. I appeared on local radio and television talk shows such as South Texas Politics, Voices of the Coastal Bend, and Comentarios. I also participated in forums, including one on November 1, 2000 at the Doctors Regional Conference Center. I have been unable to recall the dates of my other public events. At all events, however, I generally spoke regarding my qualifications, experience, and community involvement. I have no notes, transcripts or recordings from these events. In addition, although it is possible that some of the radio and television recordings may still exist, I have been unable to obtain copies of them because I do not know the dates of the interviews.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I searched my files, calendars, and the internet to respond as thoroughly as possible. The following are interviews I have given and articles in which I have been quoted, although there may be others that I have been unable to recall or identify:

Staff, District 27 Candidates Have Different Fundraising Strategies, Corpus Christi Caller-Times, Mar. 28, 2010. Copy supplied.

Mary Ann Cavazos, Instructions to Jurors Change with Social Media; Trials Could be Undone by Online Posts, Corpus Christi Caller-Times, Jan. 25, 2010. Copy supplied.

I was asked to comment on the Friday Night Corpus Christi event, which took place on November 17, 2009. Copy supplied.

Court Targets Domestic Abuse Cases, Corpus Christi Caller-Times, Sept. 14, 2009. Copy supplied.

Mary Ann Cavazos, Court Takes Domestic Abusers to Task, Corpus Christi Caller-Times, Sept. 8, 2009. Copy supplied.

Mary Ann Cavazos, *Nueces County Refines Jury Duty Efforts*, Corpus Christi Caller-Times, June 28, 2009. Copy supplied.

Mary Ann Cavazos, New Court Helps Move Inmates Out of County Jail, Corpus Christi Caller-Times, Nov. 2, 2008. Copy supplied.

Mary Ann Cavazos, Visiting Judge to Hear Juvenile Cases for Now, Corpus Christi Caller-Times, Oct. 28, 2008. Copy supplied.

Jaime Powell, County Stops Using Courthouse Holding Cells, Corpus Christi Caller-Times, June 25, 2008. Copy supplied.

Staff, Courthouse Cells Too Small in Nueces County, Associated Press, June 25, 2008. Copy supplied.

Jaime Powell, *Holding Cells Are Too Small*, Corpus Christi Caller-Times, June 24, 2008. Copy supplied.

Jaime Powell, State to Investigate Courthouse Cells, Corpus Christi Caller-Times, June 21, 2008. Copy supplied.

Mary Ann Cavazos, Many Skip Jury Duty Despite Options, Corpus Christi Caller-Times, May 19, 2008. Copy supplied.

Barbara Ramirez, Gonzales Ramos Named Presiding District Judge, Corpus Christi Caller-Times, Jan. 18, 2007. Copy supplied.

David Kassabian, Program Aims to Speed Up Jury Selection, Corpus Christi Caller-Times, Oct. 2, 2006. Copy supplied.

Sara Lee Fernandez, Soon, Jurors May Check Their Eligibility Online, Corpus-Christi Caller-Times, Apr. 22, 2006. Copy supplied.

Mike Baird, Inmate: Sanchez Spoke of Victim; Witness Denies, then Admits, Deal for his Testimony, Corpus Christi Caller-Times, Mar. 23, 2006. Copy supplied.

Sara Lee Fernandez, Absent Jurors Hinder System, Corpus Christi Caller-Times, Feb. 27, 2006. Copy supplied.

Tim Eaton, Rites for Filemon Vela Today, Friday, Corpus Christi Caller-Times, Apr. 15, 2004. Copy supplied.

- J.R. Gonzales, State District Judge Seeks Another Term in 2004, Corpus Christi Caller-Times, June 24, 2003. Copy supplied.
- J.R. Gonzales, Area Federal Judges Fair, Courteous, Poll Says, Corpus Christi Caller-Times, June 23, 2003. Copy supplied.
- J.R. Gonzales, A Second Gang-Fighting Prosecutor, Corpus Christi Caller-Times, Mar. 29, 2003. Copy supplied.
- J.R. Gonzales, New Lawyer-Appointment Plan Relies on List to Avoid Bias, Corpus Christi Caller-Times, Feb. 10, 2003. Copy supplied.
- J.R. Gonzales, Lawyers Rank How Judges Perform, Corpus Christi Caller-Times, Sept. 17, 2002. Copy supplied.

Staff, Who's the Most Beautiful, Corpus Christi Caller-Times, July 21, 2002. Copy supplied.

Caroline Bertuzzi, Spotlight: 347th District Judge: Nelva Gonzales Ramos, Corpus Christi Lawyer, Spring 2001. Copy supplied.

Dan Parker, Hispanic Women Gaining Prominence in Court; Nueces County District Judges Reflect Diverse Community, Corpus Christi Caller-Times, Jan. 1, 2001. Copy supplied.

Stephanie L. Jordan, Gonzales Ramos Wins 347th District Judgeship, Corpus Christi Caller-Times, Nov. 8, 2000. Copy supplied.

Jason Ma and Guy H. Lawrence, Area Democrats Have Big Warchests, Corpus Christi Caller-Times, Oct. 25, 2000. Copy supplied.

Jason Ma, 347th Judge Candidates Cite Experience, Service, Corpus Christi Caller-Times, Oct. 22, 2000. Copy supplied.

Jason Ma, With Issues Off Limits, Candidates Tout Experience, Corpus Christi Caller-Times, Oct. 4, 2000. Copy supplied.

Venessa Santos, Narrow Win for 347th Nomination; Democrat Gonzales Ramos Faces Medary in November, Corpus Christi Caller-Times, Mar.15, 2000. Copy supplied.

Cynthia Hodnett, Court Candidates Assert their Expertise; Nelva Gonzales-Ramos, Lisa Gonzales Campaigning for the 347th District Court, Corpus Christi Caller-Times, Feb. 20, 2000, at C1. Copy supplied.

Staff, Gonzalez Chooses Seat with Less Familiar Names, Corpus Christi Caller-Times, Feb. 20, 2000, at C1. Copy supplied.

James A. Suydam, Local Mechanic Fights City Hall, Wins, Corpus Christi Caller-Times, Aug. 17, 1999. Copy supplied.

Jennifer Stump, Gonzales-Ramos to Seek 347th District Court Post, Corpus Christi Caller-Times, July 9, 1999. Copy supplied.

Jim Day, Judge Gets Truants to School for Unconventional Lessons, Corpus Christi Caller-Times, Apr. 9, 1998. Copy supplied.

I have also been interviewed by local television stations (KIII TV3, KRIS TV, and KZTV10) regarding jury duty, jail court, the condition of courthouse holding cells, domestic violence court, courthouse security, and court appointed attorneys. I was also interviewed by these stations during my campaign regarding my qualifications and experience. Although it is possible that some of these recordings may still exist, I have been unable to obtain copies of them. If I am able to obtain copies of them in the future, I will provide them.

On August 6 and November 3, 2009, I appeared on the local radio talk shows of Comentarios and La Voz con Abel Alonzo. I spoke about my background, my job, and the importance of an education. These interviews were not recorded.

13. <u>Judicial Office</u>: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Municipal Court Judge – City of Corpus Christi Appointed (1997 – 1999) Criminal Jurisdiction – Class C misdemeanors, violations of city ordinances

District Court Judge – 347th Judicial District Elected (2001 – present)
General Jurisdiction – civil, felony, and family cases

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

As a Municipal Court Judge, I presided over 500 cases that went to verdict or judgment. As a District Court Judge, I have presided over 1200 cases that went

to verdict or judgment.

. Of these, approximately what percent were:

jury trials? 10% bench trials? 90% civil proceedings? 55% criminal proceedings? 45%

b. Provide citations for all opinions you have written, including concurrences and

As a trial court judge, I do not issue opinions.

- c. For each of the 10 most significant eases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- Perez v. Alanis, No. 04-08-00276-CV (Tex. App. San Antonio August 13, 2008, no pet.) (not reported), 2008 WL 3457035.

This case involved an election contest in Jim Wells County, Texas. I was assigned to hear the case by the Presiding Judge of the Fifth Administrative Judicial Region. Perez challenged incumbent Alanis for the position of Precinct 3 commissioner. Perez won the election by a margin of two votes. Alanis filed an election contest claiming that several voters who resided in precinct 3 were incorrectly placed in a different precinct and thus were unable to vote in precinct 3. I declared the election void, finding that two voters were prevented from voting for Alanis because they were mistakenly placed in other precincts by the County Elections Administrator. This mistake materially affected the outcome of the election. The case was affirmed on appeal.

Counsel: Phil Westergren 1750 Santa Fe Street Corpus Christi, Texas 78404 (361) 883-6807

Michael Garcia 1600 East Main Street, Suite 227 Alice, Texas 78332 (361) 668-4989 Jaime Omar Garza 2477 South Federal Highway 281 Alice, Texas 78332 (361) 664-8251

Bobby Bourlon The Bourlon Law Firm 1600 East Main Street, Suite 227 Alice, Texas 78332 (361) 664-1000

 Christus Spohn Health System Corp. v. DeLaFuente, No. 13-04-00485-CV (Tex. App. – Corpus Christi August 16, 2007, pet. granted, judgm't vacated w.r.m.) (not reported), 2007 WL 2323989.

This was a medical malpractice case involving the delivery of an infant who sustained profound brain damage from loss of oxygen. The defendant doctor settled and the case proceeded to trial against the hospital. After a two and a half week trial, the jury reached a verdict in favor of the plaintiffs and awarded damages of almost ten million dollars.

Counsel: Mark R. Mueller Mueller Law Offices 404 West 7th Street Austin, Texas 78701 (512) 478-1236

Robert J. Swift Fulbright & Jaworski, L.L.P. 1301 McKinney, Suite 5100 Houston, Texas 77010 (713) 651-5151

Ben A. Donnell Donnell, Abernethy & Kieschnick 555 North Carancahua Street #400 Corpus Christi, Texas 78478 (361) 888-5551

 Horton v. Lone Star Indus., Inc., 01-4284-H, (347th Judicial District, Nueces County, Texas).

This was the first silicosis case tried in Nueces County. The plaintiffs sued the manufacturers and suppliers of silica dust under theories of products liability, including design, marketing, and manufacturing defects; breach of implied

warranty; breach of express warranty; and negligence. After either settling with or dismissing most of the defendants, the plaintiffs proceeded to trial against the defendant, Lone Star Industries, Inc. After a two week trial, the parties settled while the jury was deliberating.

Counsel: Jason Gibson 363 North Sam Houston Parkway E, Suite 1100 Houston, Texas 77060 (713) 650-1010

James L. Ware Sheehy, Serpe & Ware, P.C. 2500 Two Houston Center 909 Fannin Street Houston, Texas 77010 (713) 951-1000

Rudy Gonzales Hilliard & Munoz 719 South Shoreline Boulevard Corpus Christi, Texas 78401 (361) 882-1612

 Cygan v. Traveler's Ins. Co., 00-2608-H, (347th Judicial District, Nueces County, Texas).

This case involved a suit against an insurance company by its insured and against the law firm the insurance company retained for subrogation purposes. The basis of the suit was a fire that destroyed the plaintiffs' home. The plaintiffs made claims for breach of the duty of good faith and fair dealing, breach of fiduciary duty, violations of the Deceptive Trade Practices Act, negligent misrepresentation, negligence, gross negligence, and conspiracy. The law firm settled and the case proceeded to trial against the insurance company. After a two week trial, the jury reached a verdict in favor of the plaintiffs and awarded damages of over two million dollars. The case was later settled.

Counsel: James Harris Andrew Greenwell Harris & Greenwell, L.L.P. 800 North Shoreline, Suite 2800 Corpus Christi, Texas 78401 (361) 883-1946 Mark A. Lindow 600 Navarro Street, 6th Floor San Antonio, Texas 78205 (210) 227-2200

Carlos Villarreal
Hermansen, McKibben, Woolsey & Villarreal, L.L.P.
1100 Tower II
555 North Carancahua Street
Corpus Christi, Texas 78478
(361) 882-6611

5. Texas v. Aguilar, 95-CR-1729-H, (347th Judicial District, Nueces County, Texas).

This was a murder case in which a daughter was accused of killing her father. The case was tried in 1997 before I took the bench. The jury convicted the defendant and her stepmother of the murder and sentenced each to 25 years in prison. After being in prison for many years, the defendant daughter made allegations of ineffective assistance of counsel. The Texas Court of Criminal Appeals ordered me to conduct a hearing regarding these claims and later reversed the case, finding that trial counsel had been ineffective. I conducted the second trial in 2009 and the jury found the defendant daughter not guilty.

Counsel: Rick Rogers 710 Buffalo Street #202 Corpus Christi, Texas 78401 (361) 888-7620

Vincent Gonzalez 606 North Carancahua Street, Suite 506 Corpus Christi, Texas 78476 (361) 883-9966

Josh Schaffer 1301 McKinney Street, Suite 3100 Houston, Texas 77010 (713) 951-9555

6. Texas v. Flowers, 07-CR-2759-H, (347th Judicial District, Nueces County, Texas).

In this case, two officials from a Christian boot camp were accused of dragging a 15 year old girl behind a van with a rope. They were charged with aggravated assault. Because of defects in the indictment, the case proceeded to trial as a misdemeanor assault. After a two week trial, the jury was unable to reach a

verdict on either defendant so I declared a mistrial. The case has now been filed in misdemeanor court.

Counsel: Mike Gordon 901 Leopard Street #206 Corpus Christi, Texas 78401 (361) 888-0410

Jimmy Parks 214 Dwyer Avenue, Suite 210 San Antonio, Texas 78204 (210) 229-1322

Brent DeLaPaz 214 Dwyer Avenue, Suite 210 San Antonio, Texas 78204 (210) 568-7499

Ed Camara P.O. Box 6130 San Antonio, Texas 78209-0130 (210) 223-5893

 Texas v. Caldwell, 07-CR-3037-H, (347th Judicial District, Nucces County, Texas).

This case involved a drug deal where two individuals were killed. The grand jury indicted the defendant for delivery of marijuana and tampering with physical evidence, but did not indict him for murder. The defendant pleaded guilty to the delivery charge and not guilty to the two counts of tampering. The jury found the defendant guilty of one of the tampering counts and assessed a five year sentence. The jury also assessed a two year sentence on the delivery charge. The jury recommended that the sentences be suspended so the defendant was placed on community supervision.

Counsel: Doug Mann 901 Leopard Street #206 Corpus Christi, Texas 78401 (361) 888-0410

Kenneth Botary 615 Leopard Street, Suite 836 Corpus Christi, Texas 78401 (361) 884-3774 Helgerson v. State, No. 13-07-359-CR (Tex. App. – Corpus Christi August 28, 2008, pet. ref'd), cert. denied, 130 S. Ct. 301 (2009) (not designated for publication), 2008 WL 5179734.

The defendant in this case was charged with three counts of intoxication manslaughter and one count of intoxication assault. The victims were siblings. The defendant pleaded guilty and requested a jury trial for punishment. The jury assessed the maximum sentence of 20 years on each of the intoxication manslaughter charges and of ten years on the intoxication assault charge. I ran the 20 year sentences consecutively and the ten year sentence concurrently. This resulted in a 60 year sentence. The case was affirmed by the Court of Appeals in an unpublished opinion. (2008 WL 5179734). The petition for discretionary review was refused by the Texas Court of Criminal Appeals on March 11, 2009. Certiorari was denied by the Supreme Court on October 5, 2009 (130 S. Ct. 301 (2009).

Counsel: Frank Errico 901 Leopard Street #206 Corpus Christi, Texas 78401 (361) 888-0410

Rick Rogers 710 Buffalo Street #202 Corpus Christi, Texas 78401 (361) 888-7620

Gonzalez v. State, 115 S.W.3d 278 (Tex. App. - Corpus Christi 2003, pet. ref'd.);
 Gonzalez v. State, No. 13-05-115-CR (Tex. App. - Corpus Christi, March 2, 2006, no pet.) (not designated for publication), 2006 WL 488681.

This case involved a gang related murder. After the defendant was found guilty of murder and engaging in organized criminal activity, he attacked the prosecutor outside the presence of the jury. During closing arguments in the punishment phase of the trial, the State compared the defendant to Osama bin Laden. I sustained the defendant's objection to this argument, but denied a request for a mistrial. I instructed the jury to disregard the argument. The State then proceeded to compare the defendant's gang to al-Qaeda. The jury assessed punishment of life in prison. The Court of Appeals reversed the punishment phase of the trial because of the State's argument. The defendant was retried on punishment only and he was again sentenced to life in prison.

Counsel: James Sales 105 West Corpus Christi Street #305 Beeville, Texas 78102 (361) 358-1007

Carlos Valdez 1201 Leopard Street Corpus Christi, Texas 78401 (361) 826-3878

Grant Jones 5826 Beauvais Drive Corpus Christi, Texas 78414 (361) 815-2470

Gerald Rogen 500 North Water, Suite 608 Corpus Christi, Texas 78741 (361) 884-4224

 Texas v. Spanutius, 08-CR-1896-H, 347th Judicial District, Nucces County, Texas

The defendant in this case was charged with the murder of Amy Ignatowski, a member of the Coast Guard. The State alleged that the defendant followed Ignatowski home after meeting her in a bar and then strangled her. The defendant claimed that he and Ignatowski got into a fight. He put her in a headlock to calm her down and she then passed out and died. The jury was instructed to consider whether the defendant was guilty of murder, manslaughter or criminally negligent homicide. After finding the defendant guilty of murder, the jury assessed a sentence of 30 years.

Counsel: Mike Gordon 901 Leopard Street #206 Corpus Christi, Texas 78401 (361) 888-0410

John Gilmore 622 South Tancahua Corpus Christi, Texas 78401 (361) 882-4378 Chris Dorsey 606 North Carancahua, Suite 1001 Corpus Christi, Texas 78476 (361) 882-9991

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

As a trial court judge, I do not issue opinions.

e. Provide a list of all cases in which certiorari was requested or granted.

Helgerson v. State, No. 13-07-359-CR (Tex. App. – Corpus Christi August 28, 2008, pet. ref'd), cert. denied, 130 S. Ct. 301 (2009) (not designated for publication), 2008 WL 5179734.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

As a trial court judge, I do not issue opinions. The following are cases in which an appellate court has reversed either my decisions or the decisions of the jury in a case over which I presided.

Crossland v. Berry, No. 13-10-217-CV (Tex. App. - Corpus Christi December 9, 2010) (not reported) 2010 WL 5020501. I granted defendant's no-evidence motion for summary judgment because plaintiffs failed to tender any evidence that they had a right to indemnity from defendant. The Court of Appeals reversed, holding that defendant's motion for summary judgment was insufficient because it did not set forth specifically the elements for which plaintiffs could produce no evidence.

Ballesteros v. Nueces County, 286 S.W.3d 566 (Tex. App. – Corpus Christi 2009, no pet. h.). Ballesteros sued Nueces County claiming he was fired for filing a worker's compensation claim. Nueces County filed a plea to the jurisdiction and motion to dismiss, arguing that Ballesteros failed to comply with section 89.0041 of the Local Government Code regarding notice to a county of a lawsuit. I granted the plea and motion. The Court of Appeals initially affirmed my decision, but on rehearing reversed it, holding that Ballesteros had substantially complied with the statute.

State v. Maldonado, 259 S.W.3d 184 (Tex. Crim. App. 2008). I granted defendant's motion to suppress his confession and the State appealed. The issue was whether the defendant or the police had initiated the communication in question. The Court of Appeals reversed my decision and the Court of Criminal Appeals affirmed the reversal in a two to one opinion.

Western Steel Co., Inc v. Altenburg, No. 13-02-450-CV (Tex. App. – Corpus Christi April 10, 2008, no pet.) (not reported), 2008 WL 963677. The jury found that the plaintiff was not the defendant's borrowed employee. The defendant appealed, claiming that the evidence was legally and factually insufficient to support this finding. The Court of Appeals initially affirmed the judgment, but the Texas Supreme Court reversed and remanded the case to the Court of Appeals, instructing the court to consider the sufficiency challenges. The Court of Appeals then reversed the judgment, holding that the evidence was legally insufficient to support the jury's finding.

El Paso South Texas v. Bay, LTD, No. 13-06-186-CV (Tex. App. – Corpus Christi December 6, 2007, pet. denied) (not reported), 2007 WL 4260523. Bay, LTD was the general contractor for the construction of a storage tank. El Paso sought indemnification from Bay for money owed to a subcontractor for materials and labor provided to paint the tank. There were multiple causes of action, counterclaims, and cross-claims between the parties. I granted Bay's motion for summary judgment, finding that El Paso was not entitled to indemnification from Bay. The Court of Appeals reversed my decision.

Christus Spohn Health Sys. Corp. v. DeLaFuente, No. 13-04-00485-CV (Tex. App. – Corpus Christi August 16, 2007, pet. granted, judgm't vacated w.r.m.) (not reported), 2007 WL 2323989. This was a medical malpractice case involving the delivery of an infant who sustained profound brain damage from loss of oxygen. The plaintiffs sued the obstetrician and the hospital. The defendant doctor settled prior to trial. The jury found that the hospital was negligent and awarded damages of almost ten million dollars. The hospital appealed and the Court of Appeals modified the judgment to vacate the award of mental anguish damages.

Texas Dep't of Public Safety v. Jimenez, No. 13-03-506 (Tex. App. – Corpus Christi August 19, 2004, no pet.) (not reported), 2004 WL 1852972. Jimenez filed a petition to expunge his arrest records because the indictment had been dismissed. I granted the petition and the Texas Department of Public Safety appealed. The Court of Appeals vacated the expunction order, holding that there was no evidence that the indictment had been dismissed due to a lack of probable cause.

Gonzalez v. State, 115 S.W.3d 278 (Tex. App. – Corpus Christi 2004, pet. ref'd). The defendant was convicted of murder and engaging in organized criminal activity and sentenced to life in prison for each offense. In closing arguments during the punishment phase of the trial, the prosecutor compared the defendant

to Osama bin Ladin. The defendant's attorney objected and asked for a mistrial. I sustained the objection, denied the request for mistrial, and instructed the jury to disregard the argument. The prosecutor then proceeded to compare the defendant's gang to al-Qaeda. The Court of Appeals held that the argument was improper and harmful. Thus, it reversed and remanded the case for a new trial on punishment.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a trial court judge, I do not issue opinions.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

As a trial court judge, I do not issue opinions.

 Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

- 14. Recusal: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
 - a. whether your recusal was requested by a motion or other suggestion by a litigant
 or a party to the proceeding or by any other person or interested party; or if you
 recused yourself sua sponte;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;
 - c. the procedure you followed in determining whether or not to recuse yourself:
 - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I follow Texas Rule of Civil Procedure 18b(2) which sets forth when a judge should recuse himself or herself.

<u>Texas v. Escobedo</u>, 10-CR-365-F, 214th Judicial District, Nueces County, Texas. I recused myself sua sponte because I knew the defendant. I determined that my impartiality might reasonably be questioned.

Texas v. Amaya, 10-CR-444-B, 117th Judicial District, Nueces County, Texas. I recused myself sua sponte because I knew the defendant. I determined that my impartiality might reasonably be questioned.

<u>Texas v. Amaro.</u> 06-CR-1885-D, 105th Judicial District, Nueces County, Texas. The defendant in this case was on community supervision. There were allegations that she made harassing telephone calls to my court reporter. I recused myself sua sponte because I determined that my impartiality might reasonably be questioned.

<u>Flores-Lamb v. Frost-Gonzales</u>, 09-5837-H, 347th Judicial District, Nueces County, Texas. The plaintiff filed a motion to recuse me after a ruling on a motion for sanctions. I forwarded the motion to the Presiding Judge of the Fifth Administrative Judicial Region. This judge later dismissed the motion.

In Re: An Investigation of an Automobile Accident Involving J. Manuel Banales, MISC-CR-1-H, 347th Judicial District, Nucces County, Texas. The automobile accident in question involved a fellow district court judge who was also the Presiding Judge of the Fifth Administrative Judicial Region. The District Attorney filed a Motion to Recuse the District Attorney's Office and a Motion to Appoint a Special Prosecutor. The motions were filed in my court because I was the Local Administrative Judge at the time. I recused myself sua sponte because I determined that my impartiality might reasonably be questioned.

Garcia v. 5th Administrative Judicial Region, 09-43-H, 347th Judicial District, Nueces County, Texas. This civil case involved the same automobile accident discussed above. I recused myself sua sponte because I determined that my impartiality might reasonably be questioned.

Celis v. Henry, 07-5508-H, 347th Judicial District, Nueces County, Texas. In this case, the plaintiff filed suit to enjoin the defendant from running television ads stating that the plaintiff was not licensed to practice law. I recused myself sua sponte because I had personal knowledge of facts that may have been disputed in the proceeding.

Texas v. Celis, 07-CR-4047-E, 07-CR-4048-E, 07-CR-4049-E, 148th Judicial District, Nueces County, Texas. I was assigned by the Presiding Judge of the Fifth Administrative Judicial Region to hear the issue of bail in these criminal cases after a fellow district court judge recused herself. The allegations in the criminal cases were related to the allegations in the civil case discussed directly above. The defendant's attorney objected to me hearing the matter because I had previously recused myself

on the civil case. I recused myself and forwarded the case to the Presiding Judge of the Fifth Administrative Judicial Region for reassignment.

Texas v. Riggins, 06-CR-360-B, 117th Judicial District, Nueces County, Texas. In this case, an attorney was charged with sexual assault of a child. I recused myself sua sponte because I had personal knowledge of facts that may have been disputed in the proceeding.

Beverly St. Clair v. Alexander, 06-4310-D, 105th Judicial District, Nueces County, Texas. This was a medical malpractice case. I informed the attorneys that one of the partners in Nuerosurgeon Institute of South Texas had served as my campaign treasurer during the time period that was relevant to the case. The plaintiff's attorney objected to me presiding over the case so I referred the case to the Local Administrative Judge for reassignment.

In the Interest of Wisner, 06-2963-D, 105th Judicial District, Nueces County, Texas. I recused myself sua sponte because the child who was the subject of the suit was a classmate of my son and I had personal knowledge of facts that may have been disputed in the proceeding. This case was not pending in my court, but was sent to me as the Local Administrative Judge because the judge assigned to the case was on vacation.

Mauger v. Texas Farmers Ins. Co., 03-5149-C, 94th Judicial District, Nueces County, Texas. This was a class action suit in which I informed the attorneys that I was an insured of the defendant, Texas Farmers Insurance Company. The plaintiffs' attorney objected to me presiding over the case so I referred the case to the Local Administrative Judge for reassignment.

In the Interest of Cuellar, 97-521-H, 347th Judicial District, Nucces County, Texas. I recused myself sua sponte because one of the parties is related to my husband. I determined that my impartiality might reasonably be questioned.

Corona v. Corona, 02-5552-H, 347th Judicial District, Nueces County, Texas. I recused myself sua sponte because I knew both the petitioner and the respondent in this divorce case. I determined that my impartiality might reasonably be questioned.

Castro v. Nueces County Bail Bond Bd., 02-6502-H, 347th Judicial District, Nueces County, Texas. I recused myself sua sponte because I was a member of the Nueces County Bail Bond Board at the time. I determined that my impartiality might reasonably be questioned.

<u>Texas v. Carnahan</u>, 01-CR-3833-H, 347th Judicial District, Nueces County, Texas. The defendant filed a motion to recuse me on the basis that I had presided over his divorce case and heard matters regarding the criminal case. I forwarded the recusal motion to the Presiding Judge of the Fifth Administrative Judicial Region and a judge was assigned to hear the recusal. The motion was denied.

Asbestos litigation – When I took the bench in 2001, there were about 60 asbestos cases pending in my court. I advised the attorneys that my father was involved in asbestos litigation as a claimant. In about 15 cases, motions to recuse were filed. I referred those cases to the Presiding Judge of the Fifth Administrative Judicial Region for reassignment.

15. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office other than judicial office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held office in any political party. I have not held a position or role in a political campaign other than my campaign for judicial office.

16. Legal Career: Answer each part separately.

- Describe chronologically your law practice and legal experience after graduation from law school including:
 - whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;
 - I did not serve as a clerk to a judge.
 - ii. whether you practiced alone, and if so, the addresses and dates;
 - I was in solo practice from September 1999 to December 2000. My address was 616 South Tancahua Street, Corpus Christi, Texas 78401.
 - the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1991 – 1997 Meredith, Donnell & Abernethy 555 North Carancahua Street #400 Corpus Christi, Texas 78478 Attorney

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

 the general character of your law practice and indicate by date when its character has changed over the years.

As an associate at Meredith, Donnell & Abernethy (1991 – 1997), my primary areas of practice were in personal injury litigation, employment litigation, and insurance defense. A small portion of my practice was in family law and workers compensation.

When I announced my candidacy for District Court Judge (1999), I resigned my position as a Municipal Court Judge as required by the city charter. I was in solo practice during the time I campaigned for office. I did contract work primarily for Constant & Vela, a law firm engaged in personal injury litigation. (This firm is no longer in existence.) A small portion of my practice was in family and criminal law and I was appointed by the courts to represent children involved in family and personal injury cases.

 your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As an associate at Meredith, Donnell & Abernethy (1991 – 1997), I specialized in personal injury litigation, employment litigation, and insurance defense. My typical clients were insurance companies, businesses, corporations, government entities, hospitals, attorneys, doctors, and other individuals.

While in solo practice (1999 – 2000), I specialized in personal injury litigation and my typical clients were individuals.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My practice was 95% litigation and I appeared in court frequently.

i. Indicate the percentage of your practice in:

5%
90%
3%
2%

ii. Indicate the percentage of your practice in:

l.	civil proceedings;	98%
2.	criminal proceedings.	2%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

While in private practice, I tried approximately 17 cases to verdict, judgment or final decision. I was sole counsel in 8, chief counsel in 2, and associate counsel in 7.

i. What percentage of these trials were:

1.	jury;	40%
2.	non-iury.	60%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

It has been over ten years since I have had an active private practice. The firm I worked for has a file retention policy of seven years. Therefore, the files I worked on are no longer available for review. The following are cases I recall working on and in which I have been able to obtain the information requested.

1. Garza v. Wal-Mart Stores, Inc., No. 54540-4, County Court at Law Number 4, Nueces County, Texas.

In this case, the plaintiff claimed that she slipped on water at a Wal-Mart store and sustained injuries. At the time, the store was being reroofed and the plaintiff alleged that the water leaked from the roof and thus the defendants were negligent. The defendants filed cross-claims against each other for contractual indemnity and contribution. I represented the defendant, Alice Roofing & Sheet Metal Works, Inc. I personally handled the case from the beginning which included deposing fact and expert witnesses, preparing and responding to discovery requests, and conducting voir dire. The case settled after the jury was seated.

Date of representation: 1993 – 1994 County Court at Law #4, Nueces County, Texas; The Honorable James Klager Counsel:

Robert Zamora 521 South Carancahua Street Corpus Christi, Texas 78401 (361) 883-6677

John F. Dietze

Mr. Dietze no longer practices law and I was unable to obtain contact information for him.

Tonya Webber One Shoreline Plaza 800 North Shoreline Boulevard, Suite 800 Corpus Christi, Texas 78401 (361) 880-5808 2. Aleman v. Dominguez, No. 93-6922-F, 214th Judicial District, Nueces County, Texas.

In this case, the plaintiff fell off of a ladder and fractured his knee when he was doing roof work on the defendant's house. The plaintiff claimed that the defendant was negligent in providing a defective ladder and in hiring incompetent workers. I represented the defendant from the initial filing of the lawsuit. I filed an answer, deposed witnesses, prepared and responded to discovery requests, filed a motion for summary judgment, and tried the case. The jury placed 50% liability on the plaintiff and 50% liability on the defendant. The net award of damages to the plaintiff was approximately \$8,000.00.

Date of representation: 1993 – 1994 214th District Court, Nueces County, Texas; Honorable Mike Westergren Counsel:

> Pete Steiner 2727 Morgan Avenue Corpus Christi, Texas 78405 (361) 881-1000

Henry Kosling - deceased

3. Lopez v. Garza, 79th Judicial District, Jim Wells County, Texas.

This case involved an automobile accident. The plaintiffs claimed that the defendant (Garza) rearended them and left the scene. Garza denied being in the accident. Codefendant (Texas Farmers Insurance Company) insured the plaintiffs under a policy which provided for uninsured motorist benefits. Farmers would be liable if the jury found that Garza was not involved in the accident and thus, the driver was unidentified. Representing Garza, I filed responsive pleadings, deposed fact and expert witnesses, prepared and responded to discovery requests, and tried the case to verdict. Garza was elderly and was hospitalized before the trial so I had to go to trial without a client. Farmers settled prior to trial. This was the first case where I called a biodynamics expert to testify before a jury. The jury found no negligence on the part of my client.

Date of representation: 1993 – 1995 79th District Court, Jim Wells County, Texas; Honorable Terry Canales Counsel:

> Wallace Canales 110 North Almond Street Alice, Texas 78332 (361) 664-9301

Larry Matthys 15600 San Pedro #402 San Antonio, Texas 78232 (210) 829-5677 4. Zurlo v. DeBruyn Produce Co., M-89-99, United States District Court for the Southern District of Texas, McAllen Division.

This was an employment case involving allegations of sexual harassment, gender based discrimination, and ERISA claims for health coverage. An attorney I worked with represented the defendants. I was responsible for researching the law, reviewing medical records, evaluating the case, preparing reports to the insurance carrier, and attending mediation. The case was settled at mediation.

Date of representation: 1994 – 1995 United States District Court for the Southern District of Texas, McAllen Division; Magistrate John Black Counsel:

William Abernethy Donnell, Abernethy & Kieschnick 555 North Carancahua Street #400 Corpus Christi, Texas 78478 (361) 888-5551

Aaron Pena 323 West Cano, Suite 100 Edinburg, Texas 78539 (956) 383-7444

5. Essex Ins. Co. v. Applied Earth Sciences, C.A. No. H-92-787, United States District Court for the Southern District of Texas, Houston Division.

This case involved an insurer's duty to defend an insured in a lawsuit. The insured was an environmental consulting firm who had been sued by a person claiming to have been exposed to hazardous chemicals. An attorney I worked with represented the insurance company. I was responsible for researching the law and preparing a reservation of rights letter, complaint for declaratory judgment, and motion for summary judgment. The complaint asked the court to construe the insurance policy and declare that the insurance company had no duty to defend the insured. The court held that there was no duty to defend.

Date of representation: 1992 – 1993 United States District Court for the Southern District of Texas, Houston Division; I do not recall the judge who presided over the case. Counsel:

Sandra Sterba Boatwright Donnell, Abernethy & Kieschnick 555 North Carancahua Street #400 Corpus Christi, Texas 78478 (361) 888-5551 Patton Breland 2007 Hermann Drive Houston, Texas 77004 (713) 526-0541

6. John Hancock Mut. Life Ins. Co. v. Bryan, C.A. No. C-94-6, United Stated District Court for the Southern District of Texas, Corpus Christi Division.

In this case, the defendant's wife disappeared and her body was discovered almost four years later. After the body was found, the defendant made a claim against the life insurance policy and the insurance company began an investigation to determine who should receive the proceeds. If the defendant was found to have caused the death of his wife, the minor children would receive the proceeds. The Nucces County Sheriff's Department was also conducting an investigation. The life insurance company filed an interpleader, requesting that the life insurance proceeds be placed in the registry of the court until the investigation could be completed. The defendant filed a counterclaim, claiming that the failure of the life insurance company to pay him the insurance proceeds constituted breach of contract, bad faith, violation of the Insurance Code and violation of the Texas Deceptive Trade Practices Act. An attorney I worked with represented the insurance company. I was responsible for researching the law, deposing witnesses, and preparing a motion for summary judgment. I believe the proceeds were eventually paid to the husband.

Date of representation: 1994 United States District Court for the Southern District of Texas, Corpus Christi Division; Honorable Hayden Head Counsel:

Sandra Sterba Boatwright Donnell, Abernethy & Kieschnick 555 North Carancahua Street #400 Corpus Christi, Texas 78478 (361) 888-5551

James Post 315 Catalina Place Corpus Christi, Texas 78411 (361) 852-2450

7. Leckrone v. Estrada, 92-6060-C, 94th Judicial District, Nueces County, Texas.

The automobile accident that led to this suit involved a tractor trailer owned by one defendant, but leased by another defendant. The plaintiff made claims of negligence and negligent entrustment. The issue regarding which defendant was liable for the negligence of the driver involved interpretation of Interstate Commerce Commission regulations. I represented the defendant, Border Connection, Inc., who owned the tractor trailer. I

researched the law, deposed witnesses, and prepared and argued a motion for summary judgment. After the plaintiff settled with the defendant who leased the tractor trailer, he dismissed my client from the suit.

Date of representation: 1994 94th District Court, Nueces County, Texas; Honorable Jack Hunter Counsel:

Mike Crane 209 West Juan Linn Street Victoria, Texas 77902 (361) 575-6764

8. Cowger v. Well Tech, Inc., 93-09-32009, 79th Judicial District, Jim Wells County,

The plaintiff, a fishing tool operator, claimed he was injured at the Celanese plant when he lifted a casing cutter in conjunction with a workover of a disposal well. The plaintiff alleged negligence and gross negligence against the defendants for failing to implement and maintain an adequate safety program, failing to provide safety equipment, and failing to train and educate workers. An attorney I worked with represented Hoescht Celanese, the owner of the premises where the plaintiff was injured. I deposed fact and expert witnesses, prepared a motion for summary judgment, and was second chair at trial. The jury found in favor of the defendants.

Date of representation: 1996 - 1997

79th District Court, Jim Wells County, Texas; Honorable Terry Canales

Counsel:

Roberta J. Hegland 98 San Jacinto Boulevard, Suite 2000 Austin, Texas 78701 (512) 524-2842

JoEllon Hewins P.O. Box 5624 Corpus Christi, Texas 78465 (361) 883-0601

David Crago 14001 Fortuna Bay Drive, Unit 5 Corpus Christi, Texas 78418 (361) 949-0866

Christopher Rodriguez

Mr. Rodriguez is no longer practicing law and I was unable to get contact information for him.

9. McKinley v. Brackin, 97-0965-A, 28th Judicial District, Nueces County, Texas.

This case involved an employment dispute at a medical clinic. The plaintiff doctor alleged that the defendants conspired to drive him from employment at the clinic. The plaintiff filed suit to enjoin the defendant clinic from ending his employment. An attorney I worked with represented the defendants. I was responsible for interviewing witnesses, preparing a removal to federal court and a motion to transfer venue, and preparing and arguing other pre-trial motions. I left the firm before the case was resolved.

Date of representation: 1997

28th District Court, Nueces County, Texas; Honorable Nanette Hasette

Ben A. Donnell Donnell, Abernethy & Kieschnick 555 North Carancahua Street #400 Corpus Christi, Texas 78478 (361) 888-5551

George Neely

Mr. Neely is no longer eligible to practice law and I was unable to get contact information for him.

10. Delgado v. Levendecker Oil, Inc., No. 16151, 229th Judicial District, Duval County,

This case involved a tractor trailer accident where two individuals were killed. The plaintiffs sued the trucking company (Leyendecker) and the company that repaired the brakes on the truck (French-Ellison) for negligence and related claims. An attorney I worked with represented the defendant, French-Ellison. I was responsible for interviewing witnesses, meeting with experts, deposing fact and expert witnesses, and preparing evaluation reports. There were a number of experts involved in this case brake experts, accident reconstruction experts, metallurgists, and economists. The case settled before trial.

Date of representation: 1996 – 1997 229th District Court, Duval County, Texas; Honorable Ricardo Garcia

Counsel:

Rebecca R. Kieschnick Donnell, Abernethy & Kieschnick 555 North Carancahua Street #400 Corpus Christi, Texas 78478 (361) 888-5551

James Post 315 Catalina Place Corpus Christi, Texas 78411 (361) 852-2450

Tony Pletcher Watts Guerra Craft, L.L.P. 500 North Water Street, Suite 1200 Corpus Christi, Texas 78401 (361) 887-0500

John Holman Barr Burt, Barr & Associates 203 East Colorado Boulevard Dallas, Texas 75203 (214) 943-0012

18. <u>Legal Activities</u>: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Domestic Violence Court – In 2007, the Nueces County Supervision and Corrections Department and I established the Domestic Violence Court. I conduct monthly review hearings for all defendants placed on community supervision for felony offenses involving domestic violence. The community supervision officers maintain contact with the victims and seek their input prior to reviews. There are currently 100 defendants in the program. A critical component of the program is completion of a batterers intervention program. Drug and alcohol use is also monitored and defendants are referred to treatment as appropriate.

Local Administrative Judge – From 2007 to 2008, I served as the Local Administrative Judge for the Nueces County District Courts. I presided over the meetings of the district court judges; was responsible for the assignment and transfer of cases when conflicts arose; ensured compliance with the local rules of administration; appointed committees regarding court management; supervised the magistrates, magistrate staff, and the court administrator; sought funding for the courts; and presented the court budget to Commissioners Court. In addition, I voted to approve an amendment to Rule 2.1 Criminal Law Magistrates as part of the Council of Judges, and voted to approve a resolution concerning protocol for prioritizing cases.

Employment Law – While employed in private practice, I advised clients regarding various employment matters which did not involve litigation. I reviewed applications for

employment to ensure that they complied with the law such as the Americans with Disabilities Act (ADA). I advised clients regarding proper notice procedures under the Employee Retirement Income Security Act (ERISA). I also reviewed employment contracts to determine proper grounds for termination of employees or to ensure that covenants not to compete would be enforceable.

<u>Unauthorized Practice of Law Committee</u> – I have served on the local subcommittee for the Unauthorized Practice of Law Committee since 1995. The committee is charged with preventing the unauthorized practice of law. I served as an investigator for the subcommittee from 1995 to 2000 and currently serve as a liaison.

Nueces County Bail Bond Board – Between 2001 and 2002, I served on the Nueces County Bail Bond Board, which adopted a set of local rules on November 26, 2002 about who could be a licensed Bail Bond Surety and who could write a bail bond.

<u>Texas Supreme Court Intern</u> – During my last year in law school, I served as an intern for Texas Supreme Court Justice Lloyd Doggett. I conducted legal research and drafted briefs on cases in which applications for writ of error had been filed. I also drafted opinions and presented them to the court.

Children's Rights Clinic - While in law school, I participated in the Children's Rights Clinic. As a student attorney ad litem, I represented children in cases where the State sought custody or termination of parental rights based on allegations of abuse and/or neglect.

I have not performed lobbying activities for any clients or organizations.

19. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. <u>Outside Commitments During Court Service</u>: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

22. <u>Sources of Income</u>: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

 Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am not aware of any actual or potential conflicts of interest. If I am confirmed, I will resolve any potential conflict by reference to the federal recusal statutes and Canon 3 of the Code of Conduct for United States Judges.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

The federal statute (28 U.S.C. sec. 455) that addresses disqualification of judges is very similar to Texas Rule of Civil Procedure 18b(2) which I referred to in response to Question 14. I will follow the federal recusal statute in the same manner that I have followed the state rule.

25. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As an attorney in private practice, I provided pro bono legal services through Coastal Bend Legal Services, now known as Texas Rio Grande Legal Aid. I provided services in the areas of family law, wills, tax liens, and social security issues. The majority of the cases involved divorces. This was over ten years ago so I do not have specific information regarding the cases or the amount of time I devoted to each.

Since 2006, I have been a Texas Bar Foundation Fellow. The foundation's mission is to provide grants and assistance to organizations so that they can provide legal services to the disadvantaged and underserved.

26. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On October 5, 2009, I sent a resume to Congressman Solomon P. Ortiz in response to a notice regarding the federal judge position. On October 28, 2009, I met with Congressman Ortiz in Washington, D.C. and appeared before the Texas Democratic Delegation. On May 12, 2010, I submitted a judicial questionnaire to Senators Hutchison and Cornyn. On June 9, 2010, I received notice that I had been recommended for nomination to the President by the Texas Democratic Delegation.

On July 15, 2010, I interviewed with the Senators' Federal Judiciary Evaluation Committee in Houston, Texas. On September 29, 2010, I interviewed with Senators Hutchison and Cornyn in Washington, D.C. On October 12, 2010, Senator Hutchison informed me that my name was being submitted to the White House for consideration. Since October 15, 2010, I have been in contact with prenomination officials at the Department of Justice. On December 3, 2010, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On January 26, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10 Rev. 1/2010

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethles in Government Act of 1978 (5.U.S.C. app. 88 101-111)

Rev. 1/2010	NOMINATION FILING	(5 U.S.C. app. §§ 101-111)
1. Person Reporting (fast name, first, middle initial)	2. Court or Organization	3. Date of Report
Ramos, Nelva G.	U.S. District Court, Texas	01/26/2011
4. Title (Article III judges indicate active or seasor star magistrate judges indicate full- or part-time)		6. Reporting Period
U.S. District Judge	Nomination. Date 01/26/2011 Injula	(11/01/2010 to (12/31/2010
7. Chambers or Office Address 901 Leopard #804 Corpus Christi, Texas 7840)	No the back of the information contained in this it modifications pertaining thereto, it is, in my opinic with applicable laws and regulations. Reviewing Officer	ón, in compliance
IMPORTANT N checking the NO	OTES: The instructions accompanying this form must be followed. (DNE box for each part where you have no reportable information. Sign	Complete all parts, on last page.
I. POSITIONS. (Reporting Individual only NONE (No reportable positions POSITIO	r.)	ORGANIZATION/ENTITY
I. Roard Member	Nucces County Juvenile Hoard	
2. Roard Member	Nucces County Purchasing Hoard	
3.		
4.		
5,		
II. AGREEMENTS. (Reporting individ	dual only; see pp. 14-16 of filing instructions.)	
NONE (No reportable agreemen	nts.)	
DATE	PARTIES AND TERM	4 S
1, 2001	State of Texas Judicial Retirement Plan	
2.		
),		

EINANCIAL DICCI	COURT DEBORA	Name of Person Repo			Date of Report
FINANCIAL DISCLO Page 2 of 8	JOURE KEPUKT	Rumos, Nelva G.			D1/26/2011
III. NON-INVESTME	NT INCOME				
A. Filer's Non-Investment		individual and spause; se	e pp. 17-24 of Jiling Unitruction	u,)	
	e non-investment income.)				
DATE		SOURCE AND	LYPE		INCOME m, not spouse's)
1. 2009	State of Texas - salar	·y			5125,000,00
2,2009	Nucces County sala	uy			\$15,000.00
3, 2010	State of Texas salar	У			\$125,000,00
4, 2010	Nueces County - sala	ıry			\$15,000,00
DATE 1. 2010 2. 3.	e non-investment income.) Onyx Pagineering -	SOURCE AND	rype ·		
4.					
IV. REIMBURSEMEN Underhales those to spanse and dependent NONE (No reportable	children; see pp. 25-27 of filing instru				
SOURCE	<u>DATES</u> I	OCATION	PURPOSE	ITEMS PAII	OR PROVIDED
t. Exempt					
2.					
3					
4.					
_					

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Permo Reporting Rumos, Netva G.	Date of Report 01/2(/2011)
V. GIFTS. (Includes those to spouse and dependent children; nee p	op. 28-11 of filing instructions.)	
NONE. (No reportable gifts.)		
SOURCE	DESCRIPTION	VALUE
). Exempt		
2		
3.		
1.		
5.		
VI. LIABILITIES. (Includes those of spoase and dependent NON): (No reportable liabilities.)	children; ree pp. 32-33 of filing instructions J	
CREDITOR	DESCRIPTION	<u>YALUE CODE</u>
1. Kleberg National Bank Note on Jim Ho	gg County property	к
2. Wells Fargo Bank Line of credit		j
3.		
4,		
5.		

	NANCIAL DISCLOSURE RI	EPOR	••	ame of Person						Patrof Report
a	ge 4 of 8			Rumos, Nelv	ra (;.					01/26/2011
/11	. INVESTMENTS and TRUS	TS _	inenme value	iconsocious i	Includes the	er of converse and d	learndent chi	iklaar so	on 14-A	n F Gline Instructions 1
7	NONE (No reportable income, ass				,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		a program for acco		pp	ngganng ann actionary
Ī	٨		p.		c,			Đ.		
	Description of Assets (including trust assets)		ene chring ring period		ink beying Ine or curt		Trussati	ons doring	reparting	period
	•	(1)	42)	(1)	(2)	· do	(2)	(3)	41)	(5)
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	Wells Fargo Bank - Accounts, CD	Λ	historest	J	Υ	lixempt				**
1.	First National Bank Accounts	۸	Interest	,	Т					
١.	Edward Jones Money Market	۸	Dividend	к	Т					
l.	(Teveland OH Arpt Sys A Rev	٨	Interest	J	т					
i.	Franklin Fed Tax-Free Income A	н	Dividend	к	T					
.	FT Bid Amer Bds 10-20 Yr #11	В	Interest	×	ï					
	Vanguard Wellington	A	Dividend	к	Т					
ξ,	Davis New York Venture Fund	A	Dividend	к	т					
).	Vanguard Instit Index Fund	۸	Dividend	к	T					
0.	Fidelity Diversified Intl Fund	Α	Dividend	к	т					
1.	Texas Municipal Retirement System	A	lmerest]	T					
2.	BR MOD 6-9 Age-Based Option A	Α	Dividend	,	T					
13,	BR MOD 6-9 Age-Based Option - B	A	Dividend	J	ץ					
4.	Loomis Sayles Bond Ret Opt		None	j	T					
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h	American Funds (inh Fund of Amer Inv Opt		None	ı	'n					
17,	Oppenheimer Global Ret Ops		None	J	τ					
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	NANCIAL DISCLOSURE I	REPOR	et [Nume of Perso	n Reporting					Date of Report
Pa	ge 5 of 8			Rumos, Neb	va G.		_	_		01/26/2011
VII	. INVESTMENTS and TRU	JSTS	income, rain	r, transscilans	(Includes the	er of spouse and d	ependent ets	ildren; see	pp. 34-60	of filing Instructions.)
	NONE (No reportable income, of	ssets, or	transacti	ons.)						
	A. Description of Assets (including annu ussets)	repor	B, enc during ning period	(into te	C. alue at end ting period			I). Has during	repening	
	Place "(X)" after each usset exempt from prior the chouse	Ansona Code I (A II)	(2) Type (e.p. dit., rent. oriat.)		(2) Value Method Code J (Q-W)	(i) Type (e.g., buy, sell, redemption)	₹2) Dailė mnv4kl/yy	(3) Value Code 2 (JP)	(4) Gain Cede I (A-II)	(5) Identity of bayer/seller (if private (transaction)
18.	Oppenheimer Sm & Mid Cap Val Fd N	A	Dividend	J	Ť					
19.	Oppenheimer Value Fund N	А	Dividen	,	т					
20.	Oppenheimer Equity N	Α	Dividend	,	T					
21.	FIA Card Services NA RASP		None	3	Г					
22.	Altria Group Inc	A	Divident	,	т					
23.	Apple, inc		None	К	Т					
24.	Cliffs Natural Resources	Λ	Dividend	1	1°				-	
25.	Forest Oit Corp New		None	,	т					
26.	Halliburton Company	A	Dividend	3	т					
37.	IP Morgan Chase & Co	٨	Dividend	ı	Ť					
294.	Sandisk Corp Inc		None	,	Т					
24.	Teres Corp Del New Com		None	į	T					
.102	Unitedhealth Group Inc	Λ	Dividend	J	T					
31.	Ishares iHOXX \$	Λ	Dividend	J	т					
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	FINANCIAL DISCLOSURE REPORT Page 6 of 8				n Reporting					Date of Report 01/26/2011
/11	. INVESTMENTS and TRUS	STS -/	nonme, volve, i	transactions (Includes the	e of spouse and a	lenendens chi	ldren: see	no. 33-60 c	of filling instructions
	NONE (No reportable income, us						•		,,	
	A. Description of Assets (including trust users)	B. Instate during reporting period		Increase during Gross value at end			Travencel	D. was daring	oriol	
	Place "(X)" after each sessel exempt firms prive disclosure	(1) Amount Code I (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J.P)	(2) Value Method Code J (Q-W)	(1) Type (e.g., buy, self, redemption)	(2) Dute nim/ds//yy	(3) Value Code 2 (3-P)	(4) Gain Crele I (A-RI	45) Mentity of hugerselter (if private transaction)
15.	S&P US PFD Sik Index FD	٨	Dividend	J	τ		T	<u> </u>	[
16.	United Contl Hildgs Inc		None	J	Ŧ					
37.	New York Life Insurance Company - Whole Life		None	К	Т		1			

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FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 7 of 8	Rumos, Nelvu G.	01/26/2011

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Report)

FINANCIAL DISCLOSURE REPORT	Nume of Person Reporting	Date of Report
Page 8 of 8	Ramos, Neiva G.	01/26/2011

IX. CERTIFICATION.

I certify that all information given above (including information pertolong to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it myt applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judkin! Conference regulations.

Signiture Melva Goizales Ramos

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY HE SURJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

Nelva Ramos

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES				
Cash on hand and in banks	I1	422	Notes payable to banks-secured	I	10	467
U.S. Government securities-add schedule			Notes payable to banks-unsecured		3	051
Listed securities - see schedule	360	106	Notes payable to relatives			
Unlisted securities			Notes payable to others			
Accounts and notes receivable:			Accounts and bills due		1	200
Due from relatives and friends			Unpaid income tax			
Due from others	5	090	Other unpaid income and interest			
Doubtful			Real estate mortgages payable – see schedule		158	426
Real estate owned - see schedule	247	137	Chattel mortgages and other liens payable			
Real estate mortgages receivable			Other debts-itemize:			
Autos and other personal property	105	100	- Wells Fargo line of credit		3	098
Cash value-life insurance	15	116				
Other assets itemize:						
			Total liabilities		176	242
			Net Worth		567	729
Total Assets	743	971	Total liabilities and net worth		743	971
CONTINGENT LIABILITIES			GENERAL INFORMATION			
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	NO		
On leases or contracts			Are you defendant in any suits or legal actions?	NO		
Legal Claims			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax					•	
Other special debt						

154

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Altria Group Inc.	\$ 2,415
Apple, Inc.	16,777
Cleveland OH Airport Sys A Rev	13,251
Cliffs Natural Resources	8,313
Edward Jones Money Market	28,444
FIA Card Services NA RASP	1,754
Forest Oil Corp. New	3,767
Franklin Federal Tax-Free Income Fund A	29,034
FT Bld Amer Bds 10-20 Year #11	18,441
Halliburton Company	3,972
IMIT Ser 415	577
iShares Barclays Tips BO	5,029
iShares IBOXX \$	4,452
iShares IBOXX \$ High Yield	5,208
iShares TR	10,506
JP Morgan Chase & Co.	9,020
Sandisk Corp. Inc.	10,132
S&P US PFD Stock Index Fund	4,881
Terex Corp. New	6,342
Unitedhealth Group Inc.	7,970
Untied Continental Holdings, Inc.	2,395
BlackRock Moderate 6-9 Age-Based Option-A	7,530
BlackRock Moderate 6-9 Age-Based Option-B	8,927
Retirement Accounts	
American Funds Fundamental Inv. Option	5,283
American Funds Growth Fund of America	5,187
Davis New York Venture Fund	26,729
Fidelity Diversified International Fund	28,492
Loomis Sayles Bond Retirement Option	6,864
Oppenheimer Developing Markets Fund N	891
Oppenheimer Equity N	1,430
Oppenheimer International Small Co. N	902
Oppenheimer Global Retirement Option	4,549
Oppenheimer Small & Mid Cap Value Fund N	1,431
Oppenheimer Value Fund N	1,476
Texas Municipal Retirement System	12,790
Vanguard Institutional Index Fund	25,648
Vanguard Wellington	29,297
Total Listed Securities	\$ 360,106

Real Estate Owned Personal residence Vacant land	\$ 202,407 44,730
Total Real Estate Owned	\$ 247,137
Real Estate Mortgages Payable	
Personal residence	\$ 130,390
Vacant land	28,036
Total Real Estate Mortgages Payable	\$ 158,426

AFFIDAVIT

I, Nelva Gonzales Ramos , do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

A. DENISE GUAJARDO

A. DENISE GUAJARDO

Notary Public

STATE OF TEXAS

My Comm. Exp. 04-10-2011

Melin Morgales Ramon
(NAME) Johnson
(NOTARY) Wyardo

STATEMENT OF HON. RICHARD B. JACKSON, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLORADO

Judge JACKSON. Thank you, Senator. And I do want to thank Senator Durbin, yourself, sir, Senator Leahy, Senator Grassley and the Committee for granting me this hearing.

I certainly want to thank the President for nominating me. And I especially want to thank Senators Udall and Bennet for their very generous introductions.

And if I might, sir, introduce my family to you.

Senator Franken. Please.

Judge JACKSON. My wife of 39 years, Liz Jackson.

Senator Franken. Welcome.

Judge JACKSON. Here on the front row. My son, who is a lawyer and living in California, Brett Jackson.

Senator Franken. Welcome.

Judge Jackson. My daughter, Jenny, who lives in New York City and came down to support me. Senator Franken. How do you do?

Judge Jackson. Two of my family couldn't be here, Senator, our other son, Jeff, our older son couldn't travel for medical reasons, and, also, his wife is expecting a child in a month and a half and she couldn't come either. But they and their two sons, our grandchildren, I'm sure are here on the Webcast. And my brother, my brother is a lawyer in Montana. He actually worked here in the Senate for several years and I know he wanted to come back and be back in his community, but he is both a lawyer and a part-time judge and couldn't schedule it on short notice, but I think he'll be watching today, too.

Thank you, sir.

Senator Franken. Well, thank you and welcome to all those watching, and good luck on the birth.

Judge JACKSON. Thank you.

Senator Franken. On the birth coming soon.

Ms. Darrow.

[The biographical information of Richard B. Jackson follows.]

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

Richard Brooke Jackson

2. Position: State the position for which you have been nominated.

United States District Judge for the District of Colorado

3. <u>Address</u>: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office:

State of Colorado Division Six, First Judicial District 100 Jefferson County Parkway Golden, Colorado 80401

4. Birthplace: State year and place of birth.

1947; Bozeman, Montana

5. <u>Education</u>: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1969 to 1972, Harvard Law School, J.D. (cum laude), 1972

1965 to 1969, Dartmouth College, A.B. (magna cum laude), 1969

6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1998 – Present State of Colorado 100 Jefferson County Parkway Golden, Colorado 80401 Chief Judge (2003-present) District Judge (1998-present)

1972 – 1998 Holland & Hart 555 17th Street Denver, Colorado 80202 Partner (1978-1998) Associate (1972-1978)

1994 – 1998
Town of Bow Mar, Colorado
5191 Bow Mar Drive
Bow Mar, Colorado 80123
Town Prosecutor (part-time, I donated all compensation back to the town)

Summer 1971 Herrick, Smith, Donald, Farley & Ketchum (since dissolved) Boston, Massachusetts Summer Associate

Summer 1970 FMC Corporation (facility no longer in business) San Jose, California Assembly line labor

Summer 1970 H.K. Porter, Inc. (facility no longer in business) Burlingame, California Night watchman

Summer 1969 Philco Ford (facility no longer in business) San Jose, California Inventory control worker

1969 – 1971 Harvard University Massachusetts Hall Cambridge, Massachusetts 02138 Assistant Coach, Harvard College Debate Team (part-time)

Other Affiliations (uncompensated)

2006 - Present Jefferson Foundation 809 Quail Street, Building #1 Lakewood, Colorado 80215 Director

2004 - Present Jefferson County Criminal Justice Strategic Planning Committee 900 Jefferson County Parkway Golden, Colorado 80401 Chair

1999 – Present
Jefferson County Corrections Board
Justice Services Division
3500 Illinois Street, #2800
Golden, Colorado 80401
Board Member (1999 – present)
Vice Chair (2004 – present)

2001 – 2006 Court Appointed Special Advocates of Jefferson and Gilpin Counties 100 Jefferson County Parkway, Room 2040 Golden, Colorado 80401 Director

1992 – 1996 Colorado Trial Lawyers Association 303 East 17th Avenue, #320 Denver, Colorado 80203 Director

1975 – 1979 (approximate) Pinecrest Homeowner's Association Denver, Colorado 80235 Director

Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

As a student at Dartmouth College, I participated in the United States Army Reserve Officer Training Corps from 1965 to 1969. I was not "discharged," but I was unable to

continue to the last two years of the four-year program and obtain a commission because of excessive refractive error in my eyes. I had been appointed to the United States Military Academy out of high school but was unable to pass its physical for the same reason. My eyesight was, however, and has always been correctible to 20/20. I registered for selective service.

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

"Barrister's Best – Best State Judge in Colorado," <u>Law Week Colorado</u> (2010) Judicial Excellence Award, American Board of Trial Advocates (2008) "500 Leading Judges in America," <u>Lawdragon Magazine</u> (2006) Judicial Recognition Award, Peer I Community Corrections Program (2004) "Best of the Bar" Lifetime Achievement Award, <u>Denver Business Journal</u> (2004) Listing in <u>The Best Lawyers in America</u> (1993 – 1998) Fellow of the American College of Trial Lawyers (named in 1993) Winner & Oralist Ames Moot Court Competiton, Harvard Law School (1971)

 Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association
Co-Chair, Insurance Coverage Committee, Litigation Section (1994 – 1997)
American College of Trial Lawyers
Fellow (1993 – present)
Colorado Bar Association
Court Appointed Special Advocates of Jefferson and Gilpin Counties
Director (2001 – 2006)
Advisory Board (2006 – present)
Colorado Trial Lawyers Association
Board Member (1992 – 1996)
Denver Bar Association
First Judicial District (Jefferson & Gilpin Counties) Bar Association
Jefferson County Criminal Justice Strategic Planning Committee

10. Bar and Court Admission:

Chair (2004 – present)
Jefferson County Mediation Project

Advisory Group Member (2000 - present)

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Colorado, 1972 District of Columbia, 1980

There have been no lapses in membership, although my D.C. Bar membership has been inactive since the mid-1990s because I have not had occasion to practice in the District of Columbia.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1980
United States Court of Appeals for the D.C. Circuit, 1980
United States Court of Appeals for the Tenth Circuit, 1972
United States District Court for the District of Colorado, 1972
Colorado State courts, 1972
D.C. Court of Appeals, 1980

There have been no lapses in membership, although my D.C. Bar membership has been inactive since the mid-1990s because I have not had occasion to practice in the District of Columbia.

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Bow Mar Owners Incorporated
Dartmouth Club of the Greater Divide (intermittent membership 1972 – present)
Dartmouth Club of Washington, D.C. (1979 –1982)
Dartmouth Lawyers' Association (1985 – present)
Denver Association of Urban Debate Leagues
Advisory Board Member (2008 – present)

Jefferson County Corrections Board
Board Member (1999 – present)
Vice Chair (2004 – present)

Jefferson Foundation
Director (2005 – present)
Kenwood Golf & Country Club (1980 – 1981)
Mile High Dinner Club (mid 1990s – present)
Pinehurst Country Club (1977 – 1979 & 1982 – present)

Pinecrest Homeowner's Association Board Member (approximately 1975 – 1979) YMCA of Metropolitan Denver (1981 – Present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of these organizations listed above currently discriminates or, to the best of my knowledge, formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

"Joe DiMaggio and You," 37 <u>The Colorado Lawyer</u> 65 (April 2008). Copy supplied.

Occasional Column, "Ask the Judge," <u>Jefferson County Bar Association</u>
<u>Newsletter</u> (2004 – 2008). I have supplied copies of all columns I could locate.

Letter to the Editor, published as a Column entitled "The untold story of rapist's sentence," Rocky Mountain News, August 15, 1999. Copy supplied.

"ABA Manual for Complex Insurance Coverage Litigation: A Prescription for Efficient, Cost Effective and Manageable Litigation – A Reply," 8 Fordham Envtl. L. Rev. 59 (1996) (co-author). Copy supplied.

"Improving the Damages Appeal: A Few Words on Having the Last Word," 32 Trial 66 (May 1996) (with Richard J. Crawford). Copy supplied.

Manual for Complex Insurance Coverage Litigation, Task Force of the Committee on Insurance Coverage Litigation American Bar Association, Section of Litigation (1993) (I am among 22 co-authors—I do not recall the particular sections to which I contributed). Copy supplied.

"Environmental Insurance Litigation Revisited: A Kinder, Gentler (Cheaper, Better) Approach," 41 <u>Trial Talk</u> 330 (December 1992). Copy supplied.

"Environmental Damage Claims: Colorado Favors Insureds," 41 <u>Trial Talk</u> 6 (January 1992). Copy supplied.

"A Practical Guide to Prosecuting Pollution Claims," 38 Risk Management 40 (August 1991). Copy supplied.

"Liability Insurance for Pollutions Claims: Avoiding a Litigation Wasteland," 26 Tulsa L.J. 209 (Winter 1990). Copy supplied.

"Environmental Cleanups and Insurance: Isn't There a Better Way?" 21 Envir. Rep. (BNA) 767 (1990). Copy supplied.

"The Political Question Doctrine: Where Does it Stand After <u>Powell v. McCormack, O'Brien v. Brown</u> and <u>Gilligan v. Morgan?</u>," 44 <u>U. Colo. L. Rev.</u> 477 (1973). Copy supplied.

A Better New Hampshire, a 96-page book-magazine published in 10,000 copies by the Citizens Council for a Better New Hampshire, 1968, Coordinating Editor and author of two chapters. I do not have a copy.

Although I do not remember and have been unable to identify any other published material I have written or edited, there may be other published material that I have been unable to remember or identify.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None that I recall or have been able to identify.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

In 2009, I submitted comments to the Jefferson County Citizens Budget Review Panel to address the budgetary needs of the Courthouse. I was asked a couple of times by the Board of County Commissioners to attend meetings of the Panel, talk about the Court and its needs, and answer questions. I did so, perhaps 30-45 minutes each time, and had no notes or written comments.

Although I do not remember and have been unable to identify any other testimony, official statements, or communications relating to matters of public policy or legal interpretation, there may be other such documents that I have been unable to remember or identify.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have searched my files and electronic databases, and I am including all materials that I have found. The list below represents my best efforts to provide an answer that is as complete as possible, but I have spoken frequently at continuing legal education, bar association, community, and school group events—especially since I became a judge—and so there may be other presentations or speeches I have given that I am unable to identify or remember. I typically do not have a text but instead used brief handwritten, occasionally typed, notes. I have some of the notes and materials and have provided copies of everything I could locate.

Speech to graduating General Educational Development (GED) class on importance of education, sponsored by Red Rocks Community College, May 29, 2009. I have no notes, transcript, or recording. The address of the College is 13300 W. 6th Ave., Lakewood, CO 80228.

Panelist with author Philip Howard and two others to discuss his book <u>Life Without Lawyers</u>, sponsored by the Institute for the Advancement of the American Legal System at the University of Denver, April 3, 2009. Notes supplied.

Speech, Green Mountain Optimist Club about courts and justice system generally, June 17, 2008. I have no notes, transcript, or recording. The address for the Club is at 10350 W. Colfax Ave, Lakewood, CO 80215.

Keynote Speaker, Graduation, Jefferson County Sheriff's Office Police Academy, June 15, 2007. Notes supplied.

Speech to Colorado Chapter of American Board of Trial Advocates regarding the "vanishing jury trial" and other jury trial-related topics, October 24, 2006. Notes supplied.

Speech, "Civility and Professionalism are the Keys to a Satisfying Legal Career," sponsored by Colorado Bar Association, date not located. Notes supplied.

Address to Sixth Grade Continuation Program, Fairmont Elementary School, concerning education and independence, May 17, 2006. Notes supplied.

Presentation, awards of maintenance (alimony) in domestic relations cases, sponsored by First Judicial District Bar Association, December 3, 2005. I have no notes, transcript, or recording. The address of the Bar Association is P.O. Box 1733, Wheat Ridge, CO 80034.

Presentation, mediation and the unauthorized practice of law, probably to a bar association group but I do not recall, November 15, 2005. Notes supplied.

Speaker, Criminal Law Update, topic "Alternatives to Incarceration," sponsored by the Colorado Bar Association, March 24, 2005. I have no notes, transcript, or recording. The address of the Bar Association is 1900 Grant St., 9th Floor, Denver, CO 80203.

Panelist, luncheon seminar on awards of maintenance (alimony), sponsored by the Family Law Section of the Colorado Bar Association, March 18, 2005. Notes supplied.

Panelist, insurance coverage update, sponsored by the Insurance Coverage Committee of the Litigation Section of the American Bar Association, Tucson, Arizona, March 5, 2005. I have no notes, transcript, or recording. The address of the ABA is 321 N. Clark St., Chicago, IL 60654.

Panelist, "The Citizen and the Constitution," sponsored by the Fairmont Elementary School, January 26, 2005. I have no notes, transcript, or recording. The address of the School is 15975 W. 50th Ave., Golden, CO 80403.

Speaker, 2004 Annual Advanced Family Law Institute, sponsored by the Colorado Bar Association, December 3, 2004. Notes supplied.

"Insurance Coverage Litigation Update," Colorado Trial Lawyers Association and Kansas Trial Lawyers Association Annual Convention, Snowmass, Colorado, August 12, 2004. I have no notes, transcript, or recording. The address of the Colorado Trial Lawyers Association is 303 E. 17th Ave., Suite 320, Denver, CO 80203.

Speaker, Colorado Bar Association seminar on jury reform, November 14, 2003. I have no notes, transcript, or recording. The address of the Bar Association is 1900 Grant St., 9th Floor, Denver, CO 80203.

Panelist, insurance coverage topics, annual meeting of Insurance Coverage Committee of the Litigation Section of the American Bar Association, Tucson, Arizona, March 8, 2003. I have no notes, transcript, or recording. The address of the ABA is 321 N. Clark St., Chicago, IL 60654.

Speaker, Family Law Institute, Colorado Bar Association, in Snowmass, Colorado, concerning family law topics that I no longer recall, July 28, 2002. I have no notes, transcript, or recording. The address of the Association is 1900 Grant Street, 3rd Floor, Denver, CO 80203.

Panelist, "Stack, Sway or Study: The Science and Ethics of Trial Consulting," sponsored by the American Society of Trial Consultants, June 8, 2002. Notes supplied.

Presentation, training for members of Judicial Performance Committees (evaluation of judges for retention recommendations), sponsored by the state Judicial Performance Committee of the State Court Administrator's Office, March 9, 2002. I have no notes, transcript, or recording. The address of the Commission is 1560 Broadway, Suite 1930 Denver, CO 80202.

Presentation, "Making an Appropriate Record on Jury Instructions," part of a "Trial Skills with Trial Lawyers" seminar sponsored by the Colorado Trial Lawyers Association, April 19, 2002. Notes supplied.

Panelist, "Lawyers and the Media," sponsored by the Faculty of Federal Advocates, May 18, 2001. I have no notes, transcript, or recording. The address of the organization is P.O. Box 12025, Denver, CO 80212.

Presentation, "Judicial Perspectives: A View from the Bench," sponsored by the Colorado Trial Lawyers Association, May 11, 2001. I have no notes, transcript, or recording. The address of the Association is 303 E. 17th Ave., Suite 320, Denver, CO 80203.

Presentation, "Critical Issues in Sentencing Sex Offenders," sponsored by the Jefferson County Children's Advocacy Center, April 13, 2001. I have no notes, transcript, or recording. The Center has since ceased operations.

Panelist, luncheon seminar on temporary and permanent maintenance, sponsored by the Family Law Section of the Colorado Bar Association, March 16, 2001. Notes supplied.

Panelist, litigation skills, sponsored by Insurance Coverage Committee of Litigation Section of the American Bar Association, approximately March 6, 1999. Notes supplied.

Panelist, seminar on "Getting Benched," sharing thoughts with and answering questions from individuals interested in a career with the Colorado state courts, sponsored by the Colorado Women's Bar Association, February 19, 1999. I have no notes, transcript, or recording. The address of the Bar Association is P.O. Box 350666, Westminster, CO 80035.

"The Mock Trial as a Settlement Mechanism and Trial Preparation Tool – a Live Demonstration and Soup-to-Nuts Guide," Annual Convention of the Litigation Section of the American Bar Association, New York, NY, April 1998. I have no notes, transcript, or recording. The address of the ABA is 321 N. Clark St., Chicago, IL 60654.

"Sunscreen for Trial Lawyers: Mock Try Your Case and Don't Get Burned," Annual Mid-Year Meeting of the Insurance Coverage Committee of the ABA Litigation Section, Acapulco, Mexico, February 1998. I have no notes, transcript, or recording. The address of the ABA is 321 N. Clark St., Chicago, IL 60654.

"Taming the Dragon: Management of the Legal Team in Complex Cases," Colorado Bar Association Annual Convention, Denver, Colorado, August 1997. I have no notes, transcript, or recording. The address of the Bar Association is 1900 Grant St., 9th Floor, Denver, CO 80203.

"The Basics of Insurance Claims for Environmental Losses," Colorado Trial Lawyers Association Seminar on "Hot Topics in Environmental Law and Toxic Torts," November 20, 1992. I have no notes, transcript, or recording. The address of the Association is 303 E. 17th Ave., Suite 320, Denver, CO 80203.

"Insurance Coverage for Environmental Claims – Legal and Practical Issues," Idaho State Bar Annual Meeting, Coeur d'Alene, Idaho, July 23, 1992. Copy supplied of the paper I presented.

"Handling Environmental Insurance Coverage Issues," American Bar Association Section of Business Law, Environmental Controls Committee, Spring Meeting, Orlando, Florida, April 10, 1992. I have no notes, transcript, or recording. The address of the ABA is 321 N. Clark St., Chicago, IL 60654.

"Practical Aspects of Insurance Coverage Cases in Environmental Law/Toxic Tort Litigation," Colorado Trial Lawyers Association, Environmental and Toxic Torts Seminar, February 8, 1991. Copy supplied of the paper I presented.

"Insurance Coverage for Environmental Damage: The Law and the Practice," Wyoming State Bar Convention, September 6, 1990. I have no notes, transcript, or recording. The address of the Wyoming State Bar is 4124 Laramie Street, Cheyenne, WY 82003.

"Rebuttal Summation on Damages Issues in Commercial and Business Tort Litigation," Association of Trial Lawyers of America, Advanced Seminar, Vail, Colorado, August 16, 1990. I have no notes, transcript, or recording. The address of the organization is 777 6th St., N.W., Suite 200, Washington, DC 20001.

"Comprehensive General Liability Insurance Litigation in the 1990's," American Bar Association Section of Litigation, Committee on Insurance Coverage Litigation, Mid-Year Meeting, Tucson, AZ, April 7, 1990. I have no notes, transcript, or recording. The address of the ABA is 321 N. Clark St., Chicago, IL 60654.

"Insurance Coverage Issues in Environmental Litigation," Dartmouth Lawyers Association, Colorado Ski-Seminar Weekend, Beaver Creek, Colorado, March 31, 1990. I have no notes, transcript, or recording. The address of the Association is P.O. Box 5002, Hanover, NH 03755.

In addition to the listings above, I have made it my practice to frequently present at continuing legal education (CLE) seminars and other trainings. I estimate that I have been a participant in panels at probably two or three dozen CLE seminars since I became a judge and I do not recall the specifics of each of them. I served on the faculty of the National Institute of Trial Advocacy, headquartered in Boulder, Colorado, during programs held in 1986, 1987, 1990, and 1991 (basic and advanced trial practice courses).

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have occasionally, particularly in my capacity as Chief Judge of the First Judicial District, been asked by the media to comment on various topics. I have searched my files and publicly-available Internet databases to identify all of the interviews I have given, and I have supplied the most complete listing available based on my searches and my recollection, but there may be others I have been unable to identify. I have supplied clips of all newspaper articles.

"WHAT THEY OWE YOU: About \$778 million is outstanding, but don't expect criminals to pony up soon," The Denver Post, Sept. 24, 2009.

"No relief in sight for court backlog," The Denver Post, Apr. 9, 2009.

"Judge 'dull' to self, 'dynamite' to colleagues," The Denver Post, Mar. 1, 2009.

"Wandering the halls of justice; Jefferson County courts takes its space crunch, remodeling ideas under advisement," *The Denver Post*, Aug. 3, 2008.

- "2nd chance for mentally ill teens; Program helps turn lives around, keeps kids out of the criminal-justice system," *The Denver Post*, Mar. 11, 2008.
- "RTD cost-cutting hits Sixth Avenue segment hard," Rocky Mountain News, Oct. 26, 2007.
- "Expanding Jeffco courts critical, says chief judge," The Denver Post, Apr. 12, 2007.
- "'Avenging angel' gives killers life with no chance at parole," Rocky Mountain News, Feb. 28, 2007.
- "Mandatory E-Filing Ordered In Jefferson County for Selected Court Case Types," US States News, May 24, 2006.
- "Courts curbing public access to records," Rocky Mountain News, Mar. 8, 2006.
- "Administrative Obstruction of Justice," News Media & the Law, Spring 2006.
- "Jaclyn Senese Named District Administrator in First Judicial District," US States News, Sept. 26, 2005.
- "Judge: Neagle shouldn't have been allowed to use alternate court exit to avoid media," Associated Press, June 17, 2005.
- "Profiles of Success: William C. McClearn," Colorado Lawyer, Dec. 2004.
- "BEST OF THE BAR: Lifetime Achievement Award R. Brooke Jackson, Jackson's stands on tough cases takes conviction," *Denver Business Journal*, June 11, 2004.
- "Priest-turned-Lawyer Never Stopped Helping," Rocky Mountain News, Feb. 14, 2004.
- "Father gets probation in shooting of toddler," The Denver Post, Jan. 15, 2003.
- "Youth Sentenced in Fatal Wreck," Rocky Mountain News, Dec. 28, 2001.
- "Judging the Judge: After a year on the Jefferson County bench, Brooke Jackson knows it can be a real hot seat," Westword, Sept. 30, 1999.
- "Judge Wants to Earn Public's Respect," Rocky Mountain News, Aug. 8, 1999.
- "Top lawyer taking seat on bench," The Denver Post, Sept. 13, 1998.

"Detective is Angry with Koby, Will Sue," Boulder Daily Camera, February 5, 1998.

"If Your Insurer Won't Pay...," Kiplinger Personal Finance, June 1995.

"10th Circuit says disposal of toxic waste voids cover," Business Insurance, Jan. 20, 1992.

"Pollution exclusion overturned," Business Insurance, Oct. 16, 1989.

13. <u>Judicial Office</u>: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

In 1998, I was appointed as a District Judge in the First Judicial District of Colorado, which covers Jefferson and Gilpin Counties. In 2003, I was appointed Chief Judge of the First Judicial District.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

250 (excluding summary judgments in civil cases and "permanent orders" hearings in domestic relations cases; there have been at least several hundred)

i. Of these, approximately what percent were:

jury trials: 70% bench trials: 30% civil proceedings: 45% criminal proceedings: 55%

 Provide citations for all opinions you have written, including concurrences and dissents.

I have not published any opinions.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

 Fleming v. Stone, No. 00CV884 (2000 to 2002) (copy of my first order attached).

Following the shootings at Columbine High School on April 20, 1999, a number of cases were filed in the Jefferson County District Court. The first case filed was randomly assigned to me, and all subsequent Columbine cases were also assigned to me. One group of these cases was brought by parents of deceased and injured victims (Fleming, et al.) against the Jefferson County Sheriff (Stone), with various media and other intervenors, seeking disclosure of information under Colorado's open records laws. I read literally thousands of documents, viewed and listened to perhaps hundreds of hours of audio and video tapes, conducted numerous hearings, and issued between a dozen and two dozen written orders.

Counsel for Plaintiffs:

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Counsel for Defendants:

Lily Oeffler (now Hon.) 100 Jefferson County Parkway Golden, CO 80401 Telephone: (303) 271-6110

Counsel for Intervenor: (The Denver Post):

Thomas B. Kelley Steven D. Zansberg 1888 Sherman Street, #370 Denver, CO 80203

Telephone: (303) 376-2410

Counsel for Intervenors

(Harrises);

C. Michael Montgomery 1775 Sherman Street, 21st Floor Denver, CO 80203

Telephone: (303) 592-6600

Franklin D. Patterson

Counsel for Intervenors (Klebolds):

5613 DTC Parkway, #400 Greenwood Village, CO 80111 Telephone: (303) 741-4539

 Village Homes v. Travelers Cas. and Sur. Co., No. 02CV410 (2002 to 2003) (copy of opinion attached).

This was an insurance coverage case. A builder of new homes had been sued by second-generation purchasers of the homes on account of

alleged construction defects. The builder sought coverage under liability insurance policies that were in effect when the homes were built but not when the homes were subsequently resold. I denied the insurer's motion for summary judgment, distinguishing what the insurer claimed was controlling authority, Browder v. United States Fidelity and Guaranty Company, 893 P.2d 132 (1995), and subsequently ordered the insurer to indemnify the policyholder for a relatively small (\$200,000) amount. My judgment was affirmed by the Court of Appeals. 148 P.2d 293 (Colo. App. 2006) and later by the Colorado Supreme Court, Travelers Cas. and Sur. Co. v. Village Homes of Colorado, Inc., 155 P.3d 369 (Colo. 2007). The case presented questions of insurance coverage law that were important to the construction industry in Colorado.

Counsel for Plaintiff: Bradley A. Levin

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Denver, CO 80202 Telephone: (303) 575-9390

Counsel for Defendants: Leslie A. Eaton

1225 17th Street, #2300 Denver, CO 80202 Telephone: (303) 299-7302

 DeHererra v. Equity Link, No. 03CV3356 (2003 to 2005) (copy of primary opinion attached).

This was a class action by individuals whose homes were "rescued" from foreclosure by a company that bought the homes and then leased them back to the homeowner with an option to repurchase. Following a trial to the Court I entered judgment in favor of the plaintiff class, finding that the lease/purchase program was in substance a loan; that the program did not violate the Colorado Uniform Consumer Credit Code, but that the defendants had violated the Colorado Consumer Protection Act and had engaged in a civil conspiracy. The case was affirmed on appeal. DeHerrera v. EquityLink, LLC, 2009 WL 2090999 (Colo. App. July 16, 2009) (unpublished).

Counsel for Plaintiff: John F. Head

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Telephone: (303) 623-6000

Counsel for Defendants: Bobee.

Bobee J. Musgrave 1700 Lincoln Street, #4100

Denver, CO 80202

Telephone: (303) 861-7000

Co-counsel for Defendants:

Joseph A. Murr 410 17th Street, #2400 Denver, CO 80202 Telephone: (303) 534-2277

 Cornerstone Group XXII, LLC v. Wheat Ridge Urban Renewal Authority, 04CV3513 (2004) (copy of opinion attached)

The City of Wheat Ridge, a suburb of Denver, condemned supposedly blighted private land in order to permit the construction of a Walgreens drug store. However, midway through the condemnation process the City renounced its contracts with Walgreens. Walgreens sued for specific performance and damages. I denied specific performance on grounds that courts do not have authority to order municipalities to resume and complete condemnation projects. My decision was later affirmed in part and reversed in part by the Colorado Court of Appeals. Cornerstone Group XXII, LLC v. Wheat Ridge Urban Renewal Authority, 151 P.3d 601 (Colo. App. 2006). The part of the Court of Appeals' decision that reversed my decision was in turn reversed by the Colorado Supreme Court, thus affirming my decision. Wheat Ridge Urban Renewal Authority v. Cornerstone, 176 P.3d 737 (Colo. 2007).

Counsel for Plaintiff: T

Thomas D. Leland 370 17th Street, #4650 Denver, CO 80202 Telephone: (720) 931-3025

Counsel for Defendants:

Steven J. Dawes 1512 Larimer Street, #300 Denver, CO 80202 Telephone: (303) 298-1601

Co-counsel for Defendants:

Corey Y. Hoffmann 1350 17th Street, #450 Denver, CO 80202 Telephone: (303) 825-6444

 State of Colorado v. General Steel Domestic Sales, LLC, No. 04CV143 (2004) (copy of opinion attached).

The Colorado Attorney General brought a suit against a company that sold steel buildings, employing nationwide radio advertising to attract potential customers. General Steel used a team of sales persons following a script to sell buildings to individuals who called in response to the ads. I divided the case into two phases and held a trial to the court

on the claims and defenses with a sampling of 11 customers. I found that the defendant company, its president and other officers violated the Colorado Consumer Protection Act and imposed injunctive relief, substantial civil penalties and attorney's fees. The parties settled for injunctive relief, several million dollars in monetary relief and attorney's fees before the case moved to the second phase, which would have involved a massive number of individual mini-trials. The Attorney General's Office published my opinion on its web site so that General Steel customers and potential customers around the country would be aware of it.

Counsel for Plaintiff: Marie E. Berkenkotter (now Hon.)

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Co-counsel for Plaintiff: Jay B. Simonson

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Counsel for Defendant: Sean R. Gallagher

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Co-counsel for Defendant: Robert N. Miller

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City of Golden v. Jefferson County, No. 03CV3045 (2004-2007) (copy of one order attached).

The City of Golden sits at the foot of Lookout Mountain in Jefferson County, Colorado. That mountain is the site of several telecommunications towers that serve the metropolitan Denver area. The Federal Communications Commission ordered that all television stations in the United States convert from analog to digital signals, and Denver's television stations wished to erect a new 730-foot tower on the mountain. This was opposed by the City, homeowner associations and the Colorado School of Mines for reasons including concerns about the health impact of radiation emissions, interference with the operation of equipment at the university, and damage to property values. The Board approved the tower following public hearings, leading to this litigation. I issued several orders over the course of this case. I am including an

order issued May 4, 2005, because it was the first substantive order and is representative of other orders that followed.

Counsel for the Plaintiff:

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Telephone: (303)443-3100

Counsel for Defendant Board:

Patricia W. Gilbert

Eric Butler

100 Jefferson County Pkwy., #5500

Golden, CO 80401

Telephone: (303) 271-8900

Counsel for Homeowners:

Deborah Carney

21789 Cabrini Boulevard Golden, CO 80401 Telephone: (303) 526-9666

Counsel for the Tower Developer: David W. Stark

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 People v. Armijo, No. 04CR3211 (2004 to 2007) (appellate opinion is reported at 2010 WL 2106552 (Colo. App. May 27, 2010).

Among several murder eases over which I have presided, *Armijo* involved unusual questions of both fact and law. The defendant confessed to stabbing and killing his girlfriend but he pled not guilty by reason of insanity, arguing that he suffered from a psychosis resulting from long-term use of methamphetamine. His contention was that because he did not know that such drug use would cause psychosis, it amounted to "involuntary intoxication" and that this psychosis, coupled with pre-existing mental illness, rendered him unable to distinguish right from wrong when the act occurred. Alternatively, he argued that the court improperly imposed an NGRI plea over his objection. I declined to instruct the jury on his theory, and he was convicted. His conviction was affirmed by the Court of Appeals.

Counsel for the People:

Bryan Cook

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Telephone: (303) 271-6800

176

Matt Maillaro 915 10th Street Greeley, CO 80632 Telephone: (970) 356-4010

Counsel for the Defendant:

David R. Jones 303 16th St., #200 Denver, CO 80202 Telephone: (303) 629-9700

Dorothea Reiff 560 Golden Ridge Road, #10 Golden, CO 80401

Telephone: (303) 279-7841

Kim v. The Grover Coors Trust, 02CV441 (2002-2004) (copy of opinion attached).

This was a class action in which shareholders of a Coors company, Graphic Packaging International Corporation, alleged that several members of the Coors family breached fiduciary duties in connection with the sale of convertible preferred stock to a Coors family trust. It was a very complex case, tried to the court in January 2004. I found that the defendants did not breach fiduciary duties. With the exception of the award of costs, which was remanded for a hearing (and settled before the hearing), the decision was later affirmed on appeal. Kim v. Grover C. Trust, 179 P.3d 86 (Colo. App. 2007).

Counsel for Plaintiff: John F. Harnes

Gregory E. Keller 964 3rd Avenue, 7th Floor New York, NY 10155-0798 Telephone: (516) 773-6090

Counsel for Defendants:

Thomas C. Bell 1550 17th Street, #500 Denver, CO 80202 Telephone: (303) 892-747

 People v. Riggan, No. 97CR1006 (1999) (copy of per curiam opinion attached).

From 1995 to 2002, Colorado used a three-judge panel system to determine whether to impose the death penalty in first degree murder cases where that penalty was sought. The district judge who presided over the guilt phase of the trial plus two district judges selected by lot

comprised the panel. Shortly after I was sworn in as a district judge in 1998 I was randomly selected and appointed by the Chief Justice to the first three-judge panel to hear and decide a death penalty case. The jury in the guilt phase did not convict on murder after deliberation; it convicted only on felony-murder. Following a penalty-phase trial, I wrote the per curiam opinion imposing a sentence of life without parole.

Counsel for People: Dennis Hall (now Hon.)

100 Jefferson County Parkway

Golden, CO 80401

Telephone: (303) 271-6150

Counsel for Defendant: Dennis W. Hartley

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 People v. Page, No. 99CR2029 (2001) (copy of panel opinion including my concurring opinion that begins at page 28 attached).

I was appointed to a second three-judge death penalty panel in 2001. The defendant had been convicted in the Denver District Court of a brutal rape and murder and I was appointed to the three-judge panel presiding over the penalty phase. My two colleagues on the panel concluded that the case was not appropriate for the death penalty. I disagreed, and wrote separately that in view of the "circumstances that are repugnant to any sense of decency and humanity that I can muster within me" I felt that the defendant deserved the death penalty. But I credited compelling physical evidence of brain damage that showed the defendant to have severely limited ability to control impulses, and so I concurred in the result with my colleagues.

Counsel for the People: Philip A. Brimmer (now Hon.)

901 19th Street Denver, CO 80294

Telephone: (303) 335-2794

Counsel for the Defendant: James A. Castle

1544 Race Street Denver, CO 80206

Telephone: (303) 675-0500

Co-counsel for the Defendant: Randolph C. Canney

1733 High Street Denver, CO 80218

Telephone: (303) 388-5014

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - 1. Fleming v. Stone, 00CV884 (copy of "Order Following In Camera Review No. 1," April 24, 2000, attached).

Counsel for Plaintiffs: Barry K. Arrington

7340 East Caley Avenue, #360 Centennial, CO 80111 Telephone: (303) 205-7870

Counsel for Defendants: Lily Oeffler (now Hon.)

100 Jefferson County Parkway

Golden, CO 80401 Telephone: (303) 271-6110

 Fleming v. Stone, No. 00CV884 (copy of "Order Following In Camera Review – No. 8," May 22, 2001, attached). My order was reversed by the Court of Appeals sub nom Denver Post Corp. v. Cook, 104 P.3d 293 (Colo. App. 2004). The Colorado Supreme Court sub nom Harris v. Denver Post Corp., 123 P.3d 1166 (Colo. 2005), reversed the Court of Appeals (although it reached different conclusions than my opinion).

Counsel for the Plaintiff: Thomas B. Kelley

Steven D. Zansberg 1888 Sherman Street, #370 Denver, CO 80203

Telephone: (303) 376-2410

Counsel for the Defendant (Sheriff): Lily Oeffler (now Hon.)

100 Jefferson County Parkway

Golden, CO 80401 Telephone: (303) 271-6110

Counsel for Intervenors (Harrises): C. Michael Montgomery

1775 Sherman Street, 21st Floor

Denver, CO 80203 Telephone: (303) 592-6600

Counsel for Intervenors (Klebolds): Franklin D. Patterson

5613 DTC Parkway, #400 Greenwood Village, CO 80111 Telephone: (303) 741-4539 3. Kim v. The Grover Coors Trust, 02CV441 (February 18, 2004) (copy attached).

Counsel for Plaintiff: John F. Harnes

Gregory E. Keller 964 3rd Avenue, 7th Floor New York, NY 10155-0798 Telephone: (516) 773-6090

Counsel for Defendants: Thomas C. Bel

Thomas C. Bell 1550 17th Street, #500 Denver, CO 80202

Telephone: (303) 892-9400

 DeHererra v. Equity Link, No. 03CV3356 (December 30, 2005) (copy attached).

Counsel for Plaintiff: John F. Head

1860 Blake Street, #300 Denver, CO 80202 Telephone: (303) 623-6000

Counsel for Defendants: Bobee J. Musgrave

1700 Lincoln Street, #4100 Denver, CO 80202 Telephone: (303) 861-7000

Co-counsel for Defendants: Joseph

Joseph A. Murr 410 17th Street, #2400 Denver, CO 80202 Telephone: (303) 534-2277

 Cornerstone Group XXII, LLC v. Wheat Ridge Urban Renewal Authority, 04CV3513 (December 30, 2004) (copy attached)

Counsel for Plaintiff: Thomas D. Leland

370 17th Street, #4650 Denver, CO 80202 Telephone: (720) 931-3025

Counsel for Defendants: Steven J. Dawes

1512 Larimer Street, #300 Denver, CO 80202 Telephone: (303) 298-1601 Co-counsel for Defendants:

Corey Y. Hoffmann 1350 17th Street, #450 Denver, CO 80202 Telephone: (303) 825-6444

6. Colorado v. General Steel Domestic Sales, LLC, No. 04CV143 (June 4, 2004) (copy attached).

Counsel for Plaintiff:

Marie E. Berkenkotter (now Hon.) 1777 6th Street Boulder, CO 80306 Telephone: (303) 441-3748

Co-counsel for Plaintiff:

Jay B. Simonson

1525 Sherman Street, 7th Floor

Denver, CO 80203 Telephone: (303) 866-4500

Counsel for Defendant:

Sean R. Gallagher 1200 17th Street, #1500 Denver, CO 80202 Telephone: (303) 454-2415

Co-counsel for Defendant:

Robert N. Miller

1899 Wynkoop Street, #700 Denver, CO 80202

Telephone: (303) 291-2313

7. City of Golden v. Jefferson County, No. 03CV3045 (copy of May 4, 2005 order attached).

Counsel for the Plaintiff:

David S. Williamson 1650 38th St., #103W Boulder, CO 80301 Telephone: (303)443-3100

Counsel for Defendant Board:

Eric Butler

100 Jefferson County Pkwy., #5500

Golden, CO 80401 Telephone: (303) 271-8900

Counsel for Homeowners:

Deborah Carney

21789 Cabrini Boulevard Golden, CO 80401 Telephone: (303) 526-9666 Counsel for the Tower Developer: David W. Stark

1700 Lincoln Street, #3200 Denver, CO 80203 Telephone: (303) 607-3753

8. Borders v. Aspen Equestrian Estates, LLC, No. 08CV3026 (March 24, 2009 and March 16, 2010) (two-part opinion attached)

Counsel for Plaintiffs: Michael L. O'Donnell

Carolyn J. Fairless Steven M. Kelso

1801 California Street, #3600 Denver, CO 80202

Telephone: (303) 244-1800

9. People v. Riggan., No. 97CR1006 (April 16, 1999) (copy attached).

Counsel for People: Dennis Hall (now Hon.)

Counsel for Defendant:

100 Jefferson County Parkway

Golden, CO 80401

Telephone: (303) 271-6150

Dennis W. Hartley 1974 South 8th Street, #5 Colorado Springs, CO 80905

Telephone: (719) 635-5521

10. People v. Page, No. 99CR2029 (March 2, 2001) (copy attached concurring opinion).

Counsel for the People: Philip A. Brimmer (now Hon.) 901 19th Street

Denver, CO 80294

Telephone: (303) 335-2794

Counsel for the Defendant: James A. Castle

1544 Race Street Denver, CO 80206

Telephone: (303) 675-0500

Randolph C. Canney Co-counsel for the Defendant:

1733 High Street Denver, CO 80218

Telephone: (303) 388-5014

Counsel for Defendants:

Kenneth D. Noel 202 North Ave., #235 Grand Junction, CO 81501 Telephone: (970) 589-6444

e. list of all cases in which certiorari was requested or granted.

I am not aware of any case over which I presided in which certiorari was requested or granted by the Supreme Court of the United States.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Supreme Court:

People v. Shari, 204 P.3d 453 (Colo. 2009) (reversed order disqualifying public defender which had been based on my finding of a conflict of interest; Rule 21 proceeding)

Harris v. Denver Post Corp., 123 P.3d 1166 (Colo. 2005) (reversed order denying access by media to certain records seized from Harris and Klebold homes pursuant to search warrant)

People v. Dunaway, 88 P.3d 619 (Colo. 2004) (reinstated my judgment after reversal by Court of Appeals, finding that my error had been harmless)

Court of Appeals:

Coley v. Jefferson County School District R-1, No. 08CA369 (Slip Op. November 13, 2008) (reversed order finding that governmental immunity did not bar claims)

Tsoupakis v. Neidich, No. 06CA1550 (Slip Op. March 13, 2008) (affirming dismissal of complaint for lack of personal jurisdiction as to one defendant but reversing as to the other defendant)

Novak v. Craven, 195 P.3d 1115 (Colo. App. 2008) (remanding for award of costs but affirming on merits)

People v. Chavez, No. 06CA444 (Slip Op. December 20, 2007) (reversing revocation of probation and remanding for further advisement)

Davis v. Hill, No. 06CA1906 (Slip Op. December 6, 2007) (reversing summary judgment for plaintiffs; following trial, court entered judgment for plaintiffs, which was affirmed on second appeal)

People v. Smith, No. 04CR634 (Slip Op. May 17, 2007) (reversing conviction on one count that merged with another count but affirming judgment in all other respects)

People v. Rickman, 155 P.3d 399 (Colo. App. 2006), cert. granted 2007 WL 93093(Jan. 16, 2007) (reversing conviction for violation of bail bond condition, because condition was established by pretrial services rather than county court), aff'd in part, rev'd in part, People v. Rickman, 178 P.3d 1212 (Colo. 2008) (reinstating a portion of my ruling)

People v Renander, 151 P.3d 657 (Colo. App. 2006) (reversed order reassembling 47 counts of sexual exploitation of children into 36 counts)

People v. Walters, 148 P.3d 331 (Colo. App. 2006) (plain error not to strike sua sponte certain remarks of prosecutor in closing argument notwithstanding absence of objection by defendant)

People v. Bowers, 04CA1135 (Slip Op. June 22, 2006) (reversing denial of post-conviction motion and remanding for hearing)

People v. Louie, 03CA46 (Slip Op. December 15, 2005) (vacating convictions on certain counts, affirming on other counts)

Haas v. Haas, 03CA1120 (Slip Op. December 23, 2004) (reversing order that parties pay children's future orthodontia expenses as part of their child support obligation; affirmed in all other respects)

Reis v. Reis, 03CA1317 (Slip Op. October 21, 2004) (reversing maintenance and child support calculations due to double counting of one expense item; otherwise affirmed)

People v. Bowman, No. 02CA1200 (Slip Op. September 23, 2004) (reversing conviction on one count due to inadequate advisement regarding right to counsel at pretrial motions hearing; otherwise affirmed)

Department of Transportation v. Auslaender, 94 P.3d 1239 (Colo. App. 2004) (reversing portion of order enjoining CDOT from approving construction of deceleration lane without a court hearing)

Branch v. Colorado Department of Corrections, 89 P.3d 496 (Colo. App. 2003) (court erred in failing to award costs to inmate who was prevailing party in successful civil suit against DOC)

Linke v. Outdoor Systems, Inc., No. 01CA858 (Slip. Op. August 21, 2003) (reversing judgment granting specific performance to property owner against holder of easement for outdoor billboards)

People v. Huerta-Lozano, No. 00CR2908 (Slip Op. July 10, 2003) (reversal of conviction because court improperly denied defendant's challenge of a prospective juror for cause)

Blesch v. Denver Publishing Co., 62 P.3d 1060 (Colo. App. 2002) (reversing order denying the Rocky Mountain News access to a portion of an autopsy report)

In re Custody of C.M., 74 P.3d 342 (Colo. App. 2002) (remanding order granting visitation rights to child's grandmother for further factual findings)

In re Marriage of Mitchell, 55 P.3d 183 (Colo. App. 2002) (concerning method of enforcing an attorney's lien)

Jaimes v. State Farm, 53 P.3d 743 (Colo. 2002) (court originally affirmed finding that policy exclusion was valid under then existing law but later reversed based upon intervening Supreme Court decision changing law)

Klebold v. Search and Seizures Conducted at 9351 Cougar Road, Littleton, Colorado, No. 01CA1240 (Slip Op. May 16, 2002) (reversing denial of return of property seized under search warrants and remanding for further hearing)

People v. Bowers, No. 00CA1181 (Slip Op. April 11, 2002) (reversing conviction on vehicular assault count but affirming in all other respects)

Florence v. Pool, No. 01CA189 (Slip Op. March 21, 2002) (reversing order affirming magistrate's extension of a temporary injunction)

Additional Cases:

There are two cases where the Court of Appeals reversed in part but the Supreme Court reinstated my judgment: Cornerstone Group XXII, LLC v. Wheat Ridge Urban Renewal Authority, 151 P.3d 601 (Colo. App. 2006), rev'd Wheat Ridge Urban Renewal Authority v. Cornerstone, 176 P.3d 737 (Colo. 2007); People v. Manzo, 144 P.3d 551 (Colo. 2006).

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

All of my orders and opinions are unpublished. Each order and opinion is placed in the files of the court clerk.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

People v. Anderson, No. 00CR933 (October 23, 2001) (copy attached)

People v. Hererra, No. 03CR370 (August 29, 2003) (copy attached)

People v. Valdez, No. 98CR3147 (August 21, 2006)

 Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

- 14. Recusal: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
 - a. whether your recusal was requested by a motion or other suggestion by a litigant
 or a party to the proceeding or by any other person or interested party; or if you
 recused yourself sua sponte;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;
 - c. the procedure you followed in determining whether or not to recuse yourself;
 - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

For the first five or six years on the bench I automatically recused myself sua sponte in any case involving my former law firm. Since that time I have not automatically recused, but I have always disclosed my prior relationship with the firm and invited all parties to notify my division clerk if they would like for me to recuse. I have not kept a record of those cases. I estimate that there have been half a dozen such cases.

I recused myself sua sponte in a case in which one of the lawyers was the subject of a complaint to the Office of Attorney Regulation Counsel that I had filed in a previous year. I do not have a record of the case.

I have recused myself in three cases in which a particular attorney was counsel of record, because I am concerned that I might be prejudiced based upon his behavior both in court and with employees in our Clerk's Office. I believe that one of those recusals might have been on a motion by the attorney. The others were sua sponte. I do not have a record of the cases.

As chief judge, I have disqualified our entire bench in a case involving criminal charges filed against a temporary employee in the clerk's office; a case involving the homicide death of a current district judge's stepson; a pro se suit against the First Judicial District by a criminal defendant who objected to probable cause findings made by a district judge at a preliminary hearing; a case in which a county court judge received a DUI; a suit against a law firm in which one of the present district judges formerly was a partner; and a case in which a county court judge was listed as a witness.

I recently recused, on the motion of the defendant in a criminal case, after I refused to impose a probationary sentence to which the parties had agreed and to which I had tentatively agreed. I declined to impose the sentence after I received a report from our Probation Department indicating that it did not wish to supervise the individual, because he was considered a community safety risk. The defendant meanwhile had been debriefed by the prosecution, allegedly due to his belief that the court would impose a probationary sentence. The prosecution did not request recusal, but I decided in the circumstances that I could not judge the parties' sentencing arguments objectively. The case is *People v. Giesen*, No. 09CR75.

I do not recall any other situation in which I have recused or disqualified myself or been asked to recuse or disqualify myself.

15. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Town Prosecutor, Town of Bow Mar, Colorado, appointed by the late Mayor Mary Carter (1994 – 1998).

Jefferson County Corrections Board, appointed by Board of County Commissioners, Jefferson County, Colorado; the present Board of County Commissioners members are Kathy Hartman, J. Kevin McCasky and Faye Griffin. I have served as a board member since 1999 and as vice chair since 2004.

I have not been a candidate for elective office, nor have I been an unsuccessful nominee for an appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I am a registered Democrat. I have not held an office in or rendered services to any political party or organization. I have not played a role in a political campaign.

16. Legal Career: Answer each part separately.

- Describe chronologically your law practice and legal experience after graduation from law school including;
 - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

 the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1972 – 1998 Holland & Hart 555 17th Street Denver, Colorado 80202 Partner (1978-1998) Associate (1972-1978)

1994 – 1998 Town of Bow Mar, Colorado 5191 Bow Mar Drive Bow Mar, Colorado 80123 Town Prosecutor (part-time)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

 the general character of your law practice and indicate by date when its character has changed over the years.

My practice focused on civil litigation. As an associate attorney I took whatever cases were assigned, usually as a junior attorney on the case, ranging from environmental and labor cases to all manner of commercial disputes. As a partner I continued a broad commercial litigation practice. However, in approximately 1982 I began to develop a tort practice for the law firm, including personal injury, products liability, and professional negligence. In 1988 I handled a significant insurance coverage case on behalf of a client whose business had become a Superfund cleanup site. That led to a number of similar cases, and insurance coverage work became a significant part of my practice from 1988 to 1998.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Typical clients in the first six years were natural resources companies (mining, oil and gas) with environmental problems; corporations with labor relations problems, wrongful discharge claims; and whatever else was assigned by partners with whom I worked. From 1979 through 1981, while in my then-firm's new Washington, D.C. office, I continued my commercial litigation practice out of Colorado but added D.C.-based federal district and court of appeals cases on behalf of large mining companies. From 1982 through 1998 I continued with a commercial litigation practice on behalf of corporate clients but developed a plaintiff's contingency fee practice as well. The clients were individuals who had sustained injuries from accidents, defective products or professional negligence. From 1988 through 1998 perhaps the majority of my clients were companies with significant environmental problems who were seeking insurance coverage for cleanup work under comprehensive general liability policies.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.
 - i. Indicate the percentage of your practice in:

federal courts: 60 %
 state courts of record: 39 %

3. other courts:

4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:

civil proceedings: 99%
 criminal proceedings: 1%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I estimate that I tried between 50 and 75 cases, nearly always as either sole counsel or chief counsel.

i. What percentage of these trials were:

1. jury: 65 % 2. non-jury: 35 %

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, arricus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not argued a case in the Supreme Court of the United States. I participated in the preparation of an amicus brief on a petition for a writ of certiorari in approximately 1973 and probably have had some role in the preparation of one or two other certiorari petitions, but I have no record of them.

- 17. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - a. the date of representation;
 - the name of the court and the name of the judge or judges before whom the case was litigated; and
 - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
 - FMC Corporation v. Liberty Mutual Ins. Co. and Lloyds of London, No. 643058, Superior Court, Santa Clara County, California, Hon. Frank Cliff. 1994 to 1997.

I represented FMC Corporation in a series of four jury trials over a three-year period. FMC owned a number of chemical and insecticide plants in various states, all of which faced Superfund cleanups as a result of seepage from waste ponds and other environmental contamination that had occurred years earlier, generally in the 1940s through the 1960s. FMC's liability insurers denied coverage for the costs of the cleanups. I was the lead trial lawyer for FMC and worked with a staff of two junior lawyers, a paralegal, and a secretary. Each trial covered several FMC sites. The results varied, but in general, FMC received verdicts and recovered damages, collectively amounting to between \$20 and \$30 million.

Opposing Counsel: John M. Bentley 1001 Marshall Street Redwood City, CA 94063 Telephone: (650) 364-8200

David L. Suddendorf One Maritime Plaza, #2475 San Francisco, CA 94111 Telephone: (415) 834-3800

Peter J. Whalen Four Embarcadero Center, #1000 San Francisco, CA 94111 Telephone: (415) 981-5550

Broderick Investment Co. v. Hartford, No. 86-Z-1033, United States
District Court for the District of Colorado, Hon. Zita Weinshienk, 1988
to 1993.

I was lead trial counsel for the plaintiff, which owned a former wood treatment plant that had become a Superfund site as a result of seepage of wood treating chemicals from an unlined waste pond. The case was first tried in 1989, resulting in what was then believed to be the first jury verdict in the country in favor of a policyholder against a liability insurer for cleanup of environmental damage. The case was reversed on appeal. 954 F.2d 601 (10th Cir. 1992). On retrial, we again received a multimillion dollar jury verdict.

Opposing Counsel: Thomas L. Roberts 1660 Wynkoop, #800 Denver, CO 80202 Telephone: (303) 575-9390 Zartman v. The TruGreen Companies, LLC, Larimer County or Weld County District Court (approximately 1994).

This was a personal injury case in which I represented the plaintiff who lost her leg when the defendant's truck struck her motorcycle. It did not go to trial. I do not recall the judge assignment, as it settled before going before the court. I believe the case was filed in the early to mid 1990s. Despite my lack of recollection of these details, I include the case because of its significance to the client and my law firm. I was able to obtain a multimillion dollar settlement that provided lifelong care and financial stability for the client. My law firm agreed to reduce the percentage of the contingency fee to which it was entitled because the settlement was negotiated fairly early in the case, and the additional payment to the client helped her achieve the financial security she needed. That was a precedent that the firm was willing to consider in future cases if appropriate.

Opposing counsel: Jonathan A. Cross 7100 East Belleview Avenue, #G-11 Greenwood Village, CO 80111 Telephone: (303) 333-4122

 Schmutz v. Boulder Community Hospital, 83CV1164-5, Boulder County District Court, Hon. Murray Richtel, 1988 to 1992.

This was a product liability and medical negligence case. The plaintiff suffered a stroke when an electric drill being used to cut through his scalp to evacuate a subdural hematoma malfunctioned, causing the drill to plunge into the brain. The case was first tried in 1989, primarily by other counsel, resulting in a defense verdict. I took the case over on appeal. The Supreme Court reversed and remanded for a new trial. Schmutz v. Bolles, 800 P.2d 1307 (Colo. 1990). I tried the case and obtained a six-million dollar jury verdict. The case was later settled while on appeal.

Opposing Counsel: Thomas N. Alfrey 999 18th Street, #1600 Denver, CO 80202 Telephone: (303) 292-2700

Paul D Cooper 1512 Larimer Street, #600 Denver, CO 80202 Telephone: (303) 607-0077 Paul E. Scott: 1050 17th Street, #2500 Denver, CO 80265 Telephone: (303) 825-2700

 Westminster v. Shaw Heights, Jefferson County, Colorado District Court, Hon. William Demoulin, 1990 to 1991.

I represented the City of Westminster, Colorado, a suburb of Denver. Water is a relatively scarce resource in Colorado and provokes considerable litigation. This case involved a dispute over the rates and the right of the City to terminate municipal water supply contracts. It was interesting in that it involved sophisticated ratemaking analysis, and it was highly important to the City's ability to conserve its water rights and to obtain a reasonable return on the amount it charged to out-of-City consumers. It was tried to the Court, resulting in a judgment in favor of the City. A later somewhat similar dispute between the same parties resulted in a judgment for the consumer.

Opposing Counsel: Richard L. Harring 1700 Lincoln Street, #3800 Denver, CO 80203 Telephone: (303) 839-3910

 In re University Hills Fire, Denver District Court, Hon. Warren Martin, 1986 to 1987.

I represented the manufacturer of a fluorescent light ballast located in a pharmacy that was said to be the source of a five-alarm fire that destroyed a major shopping center in Denver, Colorado. I was lead trial counsel. Our theory of defense, developed with the help of highly qualified electrical and fire source and origin experts, was that the ballast was not the cause of the fire; rather, the fire had started in another location within the shopping center. After spelling out the theory in our opening statement, supported by diagrams illustrating why the ballast could not have caused the fire, the case settled. Our client's insurance carrier contributed a nominal amount to the settlement, as other defendants paid the lion's share.

Opposing Counsel: Daniel W. Patterson 145 Garland Street Denver, CO 80206 Telephone: (303) 907-3546 L. Tyrone Holt 1675 Broadway, #2100 Denver, CO 80202 Telephone: (303) 225-4221

 Scott v. University of Colorado Health Sciences Center, Denver District Court, Hon. John McMullen, 1986 to 1987.

I represented the plaintiff in a medical malpractice case. My client had been in an automobile accident. Neurosurgeons diagnosed and treated a closed head injury. They did not diagnose that Mr. Scott had also sustained a dislocated and badly fractured hip. After a few days in the Denver hospital, he was transported to his local hospital in Texas, where doctors discovered the hip injury. During surgery an infection developed, ultimately resulting in a hip replacement and the loss of four inches of length in the impacted leg. The theory of the case was that the neurosurgeons were negligent in failing to conduct a complete physical examination that would have discovered the hip injury at a time when it could have been successfully treated. I was lead trial counsel for the plaintiff. The jury rendered a verdict for the defendant. The Court of Appeals affirmed. My petition for a writ of certiorari to the Colorado Supreme Court was granted on the issue of whether Colorado would recognize the doctrine of "loss of a significant chance" as a viable theory of causation and damages. However, after oral argument, the Court retroactively denied certiorari as improvidently granted.

Opposing Counsel: Mark A. Fogg 1050 17th Street, #2500 Denver, CO 80265 Telephone: (303) 825-2700

Kevin J. Kuhn 1801 California Street, #3600 Denver, CO 80202

Telephone: (303) 244-1800

 Bertrand v. BMX, Inc., United States District Court for the District of Colorado, Hon. Alfred A. Arraj, 1984 to 1985.

This was the first plaintiff's personal injury case I took to trial. The client was a teenage boy who was riding a motocross bicycle when, during a jump, the front wheel fell off, causing him to crash and sustain a closed head injury. Our theory was that the front wheel retention device had been improperly designed and had failed, thus resulting in the accident. The defense was that the wheel had come off as a result of

the accident, and that there was nothing defective or unreasonably dangerous about its design. A key piece of evidence was a policeman's testimony that he observed two marks in the dirt that were consistent with the impact of the front forks of a bicycle. The case settled for several hundred thousand dollars on the third day of trial.

Opposing Counsel: Geoffrey S. Race 1700 Broadway, #1020 Denver, CO 80290 Telephone: (303) 830-1212

9. Cabinet Mountains Wilderness/Scotchman's Peak Grizzly Bears v. Peterson, 685 F.2d 678 (D.C. Cir. 1982).

I represented Asarco, which wished to conduct mining operations in northwest Montana. The Sierra Club opposed the operation because of concern about its impact on a small population of grizzly bears in the area. The legal issues concerned the National Environmental Policy Act and the Endangered Species Act. We obtained an order of summary judgment in the district court, Hon. Gerhard A. Gesell, 510 F. Supp. 1186, which the U.S. Court of Appeals for the District of Columbia Circuit affirmed on appeal. The case established important principles under the two federal statutes and permitted the mining operation.

Opposing Counsel: Karin P. Sheldon 2260 Baseline Road Boulder, CO 80302 Telephone: (303) 444-1888

10. Mazurek v. Nielsen, 599 P.2d 269 (Colo. App. 1979).

My client was a homeowner who was defrauded by a seller and the involved realtors. The jury entered a verdict for the homeowner that was not huge, although it was substantial in the eyes of the client and substantial for the location (Routt County, Hon. Donald Lorenz) at the time. The judgment was reversed on appeal based upon a faulty jury instruction but later settled without a retrial.

Opposing counsel: James C. Vaughters 5981 South Lima Street Englewood, CO 80111 Telephone: (303) 771-7103 18. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

While in private practice, 1972 to 1998, I focused on a combination of commercial litigation and personal injury litigation, representing both plaintiffs and defendants. I opened the Washington, D.C. office of my law firm. I served on a number of committees within the firm, including being a member of its Management Committee and Chairperson of its Litigation Department. My pro bono activities focused on representation of individuals in personal injury claims and occasional criminal defense and family law matters.

I also served as the Town Prosecutor for my town, a suburb of Denver, prosecuting municipal ordinance violations on a pro bono basis. I was actively involved in teaching trial advocacy at the National Institute for Trial Advocacy, the University of Colorado Law School, and within my law firm. I was one of the founders of the firm's in-house graphics and in-house trial consultant departments. I participated in bar association committees, but my primary office was as the co-chair for a period of three years of the Insurance Coverage Committee of the Litigation Section of the American Bar Association. This was a large committee of some 1500 to 2000 members at the time.

As a district judge I have handled a mixed docket of criminal (felony), civil and domestic relations cases. In 2003 I was appointed Chief Judge by the Chief Justice of the Colorado Supreme Court, thereby taking on substantial administrative responsibilities in addition to a full case load. I have served on several committees within the Judicial Branch, most recently a committee that reviewed, modified and proposed to the Supreme Court Colorado's version of the Model Code of Judicial Discipline.

I have been actively involved in numerous community activities, many of which involve the criminal justice system, but others that involve the public schools and a program to introduce competitive debating into certain low income, inner city schools in Denver. Perhaps the most prominent of those activities is the Criminal Justice Strategic Planning Committee, which I have chaired since January 2004. This committee is comprised of key individuals in the criminal justice community (District Attorney, head Public Defender, private defense bar, Sheriff, Police Chiefs of all cities within Jefferson County, Chief Probation Officer, County Commissioners, Superintendent of Schools, local politicians, Department of Corrections, and lower court judges). The committee has a planning staff, and over the years it has implemented creative procedures to improve our criminal justice system that are receiving national attention. I have also maintained good working relationships with our local bar association and with the state legislators from Jefferson County.

I have performed no lobbying activities on behalf of any client or organization.

19. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I served on the faculty of the mid-term trial advocacy course at the University of Colorado Law School in 1984, 1985, 1987, 1989, 1991, and 1998. I have twice made a presentation to a Criminal Procedure class at the University of Colorado Law School (Prof. William T. Pizzi) on the subject of plea bargaining. The first of these was on March 7, 2002. The second class was probably in 2003 or 2004. On June 21, 2010 I presented a one and one-half hour "lecture" on motions practice and trials to the court to a "Principles of Persuasion" class at the University of Denver Law School. I am attaching the notes I used for the presentation.

20. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I will receive payments, upon retirement, from the Colorado Public Employees Retirement Association.

21. <u>Outside Commitments During Court Service</u>: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no such plans.

22. Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. <u>Statement of Net Worth</u>: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I know of nothing that would present a potential conflict of interest.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If any matter were to arise that involved an actual or potential conflict of interest, I would handle it by careful and diligent application of the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

25. <u>Pro Bono Work</u>: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During my years in practice I handled some Thursday Night Bar (Metro Volunteer Lawyers) appointments (domestic and civil cases). I took occasional appointments in criminal cases in both Denver and Adams counties. I took one plaintiff's employment discrimination case at the request of United States District Judge Sherman Finesilver that ended up being tried and ultimately resolved in the Tenth Circuit. Blondo v. Bailar, 548 F.2d 301 (10th Cir. 1977). In addition, I represented a variety of Holland & Hart employees in all manner of litigation matters where they could not afford counsel over the years. I did a great deal of teaching, speaking and writing. I served as the Town Prosecutor for my town. I estimate that I devoted an average of 50-100 hours per year to pro bono activities of one kind or another.

26. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In 2009 United States Senators Mark Udall and Michael Bennet appointed a bipartisan selection commission to recommend candidates for two vacancies on the District Court. I submitted an application, was interviewed by the commission on May 15, 2009, was among applicants recommended to the two Senators, and was interviewed by Senators Udall and Bennet on June 12, 2009. Later in June 2009 I was advised that I was one of six applicants whose names were being sent to the White House by the two Senators. On June 8, 2010, Senator Udall's office informed me that I would be hearing from the White House.

Since June 10, 2010, I have been in contact with pre-nomination officials at the Department of Justice. On July 30, 2010, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice. On September 29, 2010, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

FINANCIAL DISCLOSURE REPORT

Rey. 1/2008	NOMINA	ATION FILING	un Government Act of 1978 (5 U.S.C. app. §§ 101-111)								
			, ,,,,,,								
1, Person Reporting (last or	one, first, middle initial)	2. Court of Organization	3. Dute of Report								
Jackson, Richard B.		UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO	09/29/2010								
4. This (Article III judges in	edicate active or senior status; dicate full- or part-time)	Sa. Report Type (check appropriate type)	6. Reporting Period								
DISTRICT JUDGE	area in its bar among	Nomination, Date 09/29/2010	01/01/2009 to								
OBTACT TODGE		Initial Amount Pinal Sta.	09/24/2010								
7. Chambers or Office Add	li cia	B. On the back of the information contained in this Report and as	<u></u>								
100 JEFFERSON COU	NTY PARKWAY	modifications perculating therein, it is, is my opinion, in comple with applicable laws and regulations.	ance								
DIVISION 6 GOLDEN CO 80401		Reviewing Officer	Date								
		Reviewing Oliver									
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.											
I. POSITIONS.	(Reporting individual only; see pp. 9-13 of filling l	restructions.)									
✓ NONE (No re	portable positions.)										
	POSITION	NAME OF ORGANIZ	ZATION/ENTITY								
1.											
2.											
3.											
_	TS. (Reporting Individual only: see pp. 14-16	of filling bestructions.)									
✓ NONE (No re	portable agreements.)										
DATE		PARTIES AND TERMS									
1.											
2,											
3.			,,,,,,								

FINANCIAL DISCL	OSURE REPORT	Name of Person Repo		Date of Report		
Page 2 of 17		Jackson, Richard	В.		09/29/2010	
III, NON-INVESTMI	ENT INCOME. (Reports	e individual and spouse; a	es pp. 17-14 of fliby instruction	œ.j		
A. Filer's Non-Investment						
NONE (No reportab	le non-investment Income.)					
DATE		SOURCE AND	TYPE	(you	INCOME es, not spouse's)	
1. 2010	STATE OF COLOR	ADO			\$96,448.50	
2, 2009	STATE OF COLOR	LADIO			\$125,216.64	
3. 2008	STATE OF COLOR	ZADO			\$95,073.48	
4.						
B. Spouse's Non-Investme (Dollar canous not required accept for NONE (No reportab) DATE		daring any portion of the SOURCE AND		rtion.		
1. 2010	SELF-EMPLOYED	TRAVEL AGENT				
2, 2009	SELF-EMPLOYED	TRAVEL AGENT				
3.						
4.						
IV. REIMBURSEME (Includes those to sporue and dependen NONE (No reportab	schildren; see pp. 15-27 of filling insen					
SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAI	D OR PROVIDED	
1. EXEMPT						
2						
3.						
4.						
5 .						

FINANCIAL DISCLOSURE REPORT Page 3 of 17	Nees of Ferson Reporting Jackson, Richard B.	Date of Report : : 09/29/2010
V. GIFTS. (Includes thank to sporte and dependent children; see p	p. 28-31 of filling insersections.)	
NONE (No reportable gifts.)		
SOURCE	DESCRIPTION	VALUE
1. ЕХЕМРТ		
2.		
4.		
5.		
VI. LIABILITIES. (Includes those of spouse and dependent	children; see pp. 32-33 of filing instructions.)	
✓ NONE (No reportable liabilities.)		
CREDITOR	DESCRIPTION	VALUE CODE
1.		
2.		
5.		

	FINANCIAL DISCLOSURE REPORT Page 4 of 17			Name of Person Reporting Jackson, Richard B.						Date of Report 09/29/2010	
vii	L INVESTMENTS and TRUS NONE (No reportable income, as:				(Includes the	ec of spouse and d	'apontost ch	liben; ses	гра 34-66	of filling hunrections.)	
	A. Description of Assets (including trust sames)		B. one during ring period	C. Orosa value at end of reporting period		D. Tennactions during reporting period					
	Place "OO" after each syste exempt from prior disclassare	(t) Amount Code I (A-H)	(2) Type (c.g. div., rest, er int.)		(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redecaption)	(2) Date Month - Day	(3) Valno Code 2 (J-P)	(A) Gain Code I (A-H)	(5) Identity of buyer/seller (if private transaction)	
1.	IRA #1			Г	T	Exempl	T	Γ			
2.	-VANGUARD VALUE VIPERS	В	Divideo	d L	Т			<u> </u>	一		
3.	-VANGUARD FTSE ALL WORLD EX US INDEX	В	Dividen	d K	т		 				
4.	-VANGUARD EXTENDED MKT VIPERS	A	Dividen	4 L	Ŧ			 			
5.	-VANGUARD GROWTH VIPERS	В	Dividen	d L	Т						
6.	-BNY MELLON MUNICIPAL OPPOR TUNITIES FUND	A	Dividen	d J	Т			 			
7.	-BNY MELLON NATIONAL INTERMEDI ATE MUNICIPAL BOND FUND	С	Dividen	d K	T						
8.	-US TREASURY NOTE 1/2011	٨	Dividen	d K	T						
9.	-US TREASURY NOTE DTD 10/2012	٨	Dividen	d K	Т						
10.	-ALCOA	A	Dividen	1							
11.	-APACHE CORP	A	Dividen								
12.	-BOEING CORP	A	Dividenc	,							
13.	-BANK OF AMERICA CORP	A	Dividend	•							
14.	-CONOCOPHILLIPS	Α	Dividenc	1							
15.	-AMGEN INC	A	Dividenc	3			1				
16.	-EMERSON BLECTRIC CO	^	Divident	1							
17.	-1BM	A	Divident	1							
					J	I			ı	<u> </u>	

C =12,501 = \$5,000 N1 =51,000,001 = \$5,000,000 L =\$50,001 = 31,000,000 P1 =31,000,001 = \$5,000,000 P4 =34,000,001 = \$5,000,000 S =Amendment W =Entimated

D=\$5,00) -\$15,000 H2=More than \$5,000,000 M=\$100,00) -\$250,000 P3=\$5,000,001 -\$25,000,000

T=Coult Market

A ~51,000 or loss
P ~50,000 ~ 5100,000
J ~5100,000 ~ 5100,000
N ~520,000 ~ 520,000
P 3~523,000 ~ 520,000
Q ~Apprissi
U ~Book Velos

8 =\$1,001 - 52,500 C =\$150,801 - \$1,000,000 C =\$15,001 - \$30,000 C =\$15,001 - \$1,000,000

R ~Cost (Roal Estate Only) V ~Other

3. Income Gain Codes: (Son Columns B1 and D4) 2. Value Godes (See Columns C1 and D3)

FI	FINANCIAL DISCLOSURE REPORT				Name of Person Reporting					
Pa	ge 5 of 17			Jackson, F	Behard B.					09/29/2010
VII	L INVESTMENTS and TRUS NONE (No reportable income, as:				s (Includer the	क र्ज प्रकाशक साथ है	apandani ch	lidren; sea	грук 34-66	d of filing instructions.)
	A. B. Description of Assets Income d (including trust assets) coporting				C. skie at end of ting period		Transacti	D.		s period
	Place "(X)" after each asset exempt from prior disclorate	(1) Amount Code I (A-H)	(2) Typo (c., div., ren or inc)	, Code 2	(2) Value Method Code 3 (Q-W)	(I) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Osin Code I (A-H)	(5) theatity of buyerheller (if private transaction)
18.	-HONEYWELL INTL INC	A	Divide	×	T	<u> </u>			T	
19.	-GENERAL ELECTRIC CO	^	Divide	rq.						
20.	-J-P MORGAN CHASE	۸	Divider	nd						
21.	-MCDERMOTT INTL INC	٨	Divider	rd .						
22.	-MBIA INC	A	Divider	kd						
23.	-MICROSOFT CORP	A	Divider	xd						
24.	-XTO ENERGY INC	Α	Divider	xd						
25.	-WELLS FARGO AND CO	۸	Divider	ed .						
26.	-ST JUDE MEDICAL INC	A	Divider	ıd						
27.	-DNP SELECT INCOME PD INC	٨	Dividen	d						
28.	-XCEL ENERGY INC	Α	Dividen	d						
29.	-PUBLIC STORAGE PFD	A	Divided							
30.	-CTTIGROUP CAP IX PFD STK	A	Dividen							
31.	-TEMPLETON GLOBAL INCOME FUND -GEN ELEC CAP C 5.75%	A	Dividen		_					
32.	-LA SALLE FUNDING LLC 4.5%	^	Interes		-					
		^	Interes		<u> </u>					
34.	-AMERICAN WASHINGTON MUTUAL INVT A	A	Dividen	d			<u> </u>		l	
								•		
2 V	Notice A - 51,000 or less	,000	H =61,001 - 1 G =1100,001 K =115,001 - C =1500,001	\$1,000,000 \$50,000	1 =150,00 71 =51,00	00,001 - \$3,000,000 01 - \$190,000 0,001 - \$3,000,000 thm \$50,000,000	H2 =Ma M =\$100	01 - \$15,000 en theo (55,0 0,001 - \$250 100,001 - \$2	00,000 L000	E =\$13,001 - \$50,000
	ine Column (2) U -Book Value		V -Other	/	W-Baire					

FINANCIAL DISCLOSURE REPORT		tT [Name of Person Reporting						Date of Report			
Pa	ge 6 of 17			Jackson, Richard B.						09/29/2010		
VII	VII. INVESTMENTS and TRUSTS - tecome, value, transactions (Includes those of upones and dependent children; see pp. 34-48 of filing instructions.) NONE (No reportable income, assets, or transactions.)											
	A. Description of Assets (including trust assets)		B. one during ting period	Orona val	C. un at end of og period					g period		
	Place "(X)" after each asset exempt from prior disclosure	(I) Amount Code 2 (A-H)	(2) Type (c.g div., ren or int.)		(2) Value Method Code 3 (Q-W)	(I) Type (c.g., buy, #il, redemption)	(2) Date Month - Day	(3) Value Code 1 (J-P)	(4) Gain Code I (A-H)	(5) Identity of Sulyer/seller (if private transaction)		
35.	-OROWTH FD AMER INC	A	Divides	a T				Τ				
36.	-NEW ECONOMY FD SH BEN ENT	A	Dividen	d				T				
37.	-NEW WORLD FUND F	A	Divideo	a T								
38.	-SMALLCAP WORLD FD INC COM	^	Dividen	4								
39.	-US TREASURY NOTE 7/2010	Α	Dividen	d								
40,	-GENENTECH INC	A	Dividen	d								
41.	BROKERAGE ACCOUNT #1											
42.	FED HOME LN MTG CORP	Ð	Dividen	d L	τ							
43.	FED HOME LOAN BANKS	C	Divideo	d L	T							
44.	US TREASURY NT 11/12	С	interest	L	T							
45,	US TREAS INFLATION IND BOND	A	Interest	L	τ							
46.	US TREASURY NOTE 6/2016	В	Interest	L	Т							
47.	US TREASURY NOTE 12/16	В	Interest	L	Ť							
48.	US TREASURY NOTE 7/17	٨	Interest	L	Т					,		
40	HIC TOP ACTION MOTO SHO	1 .		. 1	1	1	1	1				

7 AM (20	gene Gain Codes; s Coltemas Bit and D4) tes Codes s Coltemas C1 and D3)	A =51,000 or less P =\$10,001 = \$100,000 J =\$15,000 or less N =\$250,001 = \$500,000	# =51,002 - 52,500 G-\$100,001 - 51,000,000 K-\$11,001 - 52,000,000 G-\$500,001 - 51,000,000	C=\$1,50 i - \$3,000 H1 =\$1,000,00 i - \$5,000,000 L=\$50,00 i - \$100,000 P1 =\$1,000,001 - \$5,000,000	D =91,001 - 915,000 112 = More then 53,000,000 M =5100,001 - 5250,000 P2 =81,000,001 - \$25,000,000	E =\$15,001 - \$50,000
	ter Michael Cudes o Columno (31)	P3 =525,000,000 - \$50,000,000 Q ::Appraisal t7 =Book Value	R =Cost (Rest Essate Daly) V =Other	P4 ~More time E50,000,500 S &Americant W ~Entimeted	T-Cash Marks	

50. US TREASURY BILL 6/9

51. GEN ELECT CAP CPR 9/17

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 7 of 17	Jackson, Richard B.	09/29/2010

VII. INVESTMENTS and TRUSTS — locamic, reduc, commercione (lactudes those of spouse and dependent children; see pp. 34-40 of filling businessees.) NONE (No reportable income, assets, or transactions.) Description of Assets (lactuding trust secret) Description of Assets (lactuding trust secret) Transactions during reporting period (lactuding trust secret) (1) (2) (1) (2) (1) (2) (3) (5) (5) The control of the secret secret (lactuding trust secret)

	Place "(X)" after each asset exempt from prior disciosure	(I) Amount Code I (A-H)	(2) Type (e.g., div., rest, or int.)	(I) Value Code 2 (J-P)	(2) Value Mothod Code 3 (Q-W)	(1) Typo (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (I-P)	(4) Gerin Code t (A-H)	(5) Identity of buyer/aeller (if private transaction)
52.	WELLS FARGO CO 5.25% 10/12	В	Interest	K	Т					
53.	AETNA INC	В	Interest	κ	Т					
54,	PFIZER INC	В	Interest	К	Т					
55.	GOLDMAN SACHS GROUP INC	В	Interest	К	Т					
56.	AT & T INC	В	Interest	ĸ	Т					
57.	ISHARES SAP GSCI COMMODITY IND EXED TRUST	A	Interest	K	Т					
58.	ADM STIT TREASURY PORTFOLIO	A	Interest	L	Т					
59.	SPDR TRUST SERIES !	D	Dividend	М	ī					
60,	VANOURD GROWTH ETF	В	Dividend							
61.	ISHARES TR MIDCAP	С	Dividend	L	Т					
62.	VANOUARD VALUE	В	Dividend		-					
63.	SPDR DOW JONES INDUSTRIAL AVER AGE	D	Dividend	м	т					
64.	ISHARES MSCI EAFE INDX FUND	D	Dividend	М	Т					
65.	ISHARES TR	В	Dividend	м	Т					
66.	ISHARES RUSSELL 1000 INDEX FUND	С	Dividend	м	T					
67.	ISHARES TR S & P SMALL CAP 600	٨	Dividend	L	Т					
68.	VANGUARD EMERGING MARKETS E TF	В	Dividend	L	т					

I, Income Gain Codes:	A =\$1,000 or less	8-\$1,001 - \$2,500	C =32,501 - 85,000	D-\$5,001 - \$15,000	E-\$15,001 - \$50,000
(Size Collustes B3 and D4)	000,0012 - 100,022- T	000,000,12 - 100,001 t= 0	14 -51,000,001 - 15,000,000	H2 -More than £5,000,000	
2. Valto Codes	J=\$15,800 or less	K-515,001 - \$30,000	L-550,001 - \$100,000	M -\$100,001 - \$250,000	
(See Columns C1 and D3)	N -8230,001 - \$100,000	O -4500,003 - \$1,000,000	P1 -\$1,000,001 - \$5,000,000	P2 =\$1,000,003 - \$25,000,000	
(P3 -\$25,000,001 - \$50,000,000		P4 = Marc (5 to \$50,000,000		
3. Value Mothad Codes	Q =Approbal	R -Cost (Real Estate Dely)	5 "Assessment	7 =Cm& Market	
(See Column C1)	(I =Book Velue	V =Other	W "Estimated		

	NANCIAL DISCLOSURE R ge 8 of 17	et [Nume of Perso Jackson, Ri			-	-		Date of Report 09/29/2010		
VII	. INVESTMENTS and TRUS				(Includes the	ne of spouse and d	iq entos d	lidros; see	: pp. 34-68	of filing instructions.)	
	A. Description of Assets (including trust assets)		E, sne during ving period	C. Gross value at end of reporting period		D. Transactions during reporting period					
	Place "(X)" after each nairs exemps from palor disclosure	(1) Amount Code 1 (A-H)	(2) Type (c.g. div., rest, or int.)		(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)	
69.	FED HM LN MTG CORP	С	Dividen	а м	Т		T]			
70.	FED HOME LOAN BANK	С	Dividen	а м	Т						
71.	FED NAT MTG ASSN	С	Dividen	1							
72.	401(k) #1										
73.	-PIMCO TOTAL RETURN FUND	С	Dividen	i K	T						
74.	-DODGES & COX BALANCED FUND	D	Dividen	K	τ						
75.	-DODGE & COX STOCK FUND	С	Dividen	ı t	Т						
76.	-FIDELITY CONTRAFUND	С	Dividen	1 1	τ						
77.	-RAINIER LG CAP GROWTH EQUITY	В	Dividen	ı ı	Т						
78.	-AMERICAN FUNDS EUROPACUTIC GR	С	Dividen	i J	T						
79.	BROKERAGE ACCOUNT #2										
80.	CHEVRON CORP	С	Dividenc	К	т						
81.	EXXON MOBIL	D	Dividend	L	T						
82.	AIR PROTS AND CHEMICALS INC	В	Dividenc	K	Т						
83.	EMERSON ELECTRIC CO	Α	Dividend	к	Т						
84.	GENERAL ELECTRIC CO	^	Dividend	ı K	τ						
85.	UNION PAC CORP	A	Dividenc	к	т						

C=52,501 - \$5,000 H1 - \$1,000,001 - \$5,000,000 L - \$56,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = \$1,000,001 - \$5,000,000 S = Assessment W = Extrasted

T-Contributed

E-\$15,003 - \$50,000

A-51,000 or less
F-550,001 - 5100,000
J-515,000 or less
N-5150,001 - 550,000
97 3-525,000,001 - 550,000,000
U-Book Value

B=\$1,001 - \$2,500 G=\$100,001 - \$1,000,000 K=\$15,001 - \$10,000 O=\$500,001 - \$1,000,000

R -Cost (Roal Estate Only) V -Other

Income Gain Codes;
(See Cohense D1 and D4)
 Value Codes
(See Cohense C1 and D3)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 9 of 17	Juckson, Richard B.	09/29/2010

VII. INVESTMENTS and TRUSTS – income, value, invanctions (Includes those of spoons and dependent children) was 30, 24-60 of filling instructions.) NONE (No reportable income, assets, or transactions.)

	A. Description of Assets (including trust seach)		B. me thering ting period	Oroca vals	ic at end of g period	D. Tymmactions during reporting period				
	Place "(X)" after each named exempt from prior disclosure	(1) Amount Cade I (A-H)	(2) Type (e.g., div., rent, or int.)	(I) Value Code 2 (I-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redessption)	(2) Dato Month - Day	(3) Vaine Code 2 (J-P)	(4) Guin Code I (A-H)	(5) Identity of buyer/seller (if private transaction)
85.	UNITED TECHNOLOGIES CORP	В	Dividend	к	Т		Ī	Γ		
87.	WALT DISNEY CO	Α	Dividend	,	Ŧ			 		
88.	OHNSON CTLS INC	Α	Dividend	1	Т					
89.	STARBUCKS CORP	С	Dividend	М	Т					
90.	NESTLE'S A SPONSORED ADR REPSTO	В	Dividend	K	T					
91.	PEPSICO INC	В	Dividend	K	T					
92.	PROCTER & GAMBLE CO	С	Dividend	К	T					
93.	ABBOTT L ABORATORIES	A	Dividend	J	Т					
94.	IOHNSON & JOHNSON	С	Dividend	к	Т					
95.	PFIZER INC	Α	Dividend	J	Т					
96.	TEVA PHARMACEUTICAL INDS LTS	A	Dividend	,	Т					
97.	THERMO FISHER SCIENTIFIC INC	٨	None	3	т					
98.	INVESCO LTD	٨	Dividend	,	τ					
99.	ACELTD	^	Dividend	к	Т					
100.	JP MORGAN CHASE & CO	A	Dividend	1	т					
101.	MORGAN STANLEY	^	Dividead	J	Т					
102.	STATE STREET CORP	٨	Dividend	J	T					

١	1. Income Gain Codes:	A =\$1,000 or less	5 -\$1,001 - 12,500	C-\$3,501 - \$5,000	D-45,001-\$15,000	E =\$15,001 - \$10,000
ı	(See Columns 191 and D4)	900,0012 - 100,002= T	G-E100,001 - £1,000,000	111 -\$1,000,001 - \$5,000,000	H3 - More than \$5,000,000	
1	2. Value Codes	3 =\$15,000 or less	K =515,001 - 550,000	L =\$50,003 - \$100,000	M-\$100,001 - \$250,000	
İ	(See Columns C1 and D1)	H +\$250,001 - \$500,000	0-8500,001 - \$1,000,000	PI =51,000,001 - \$5,000,000	P2-\$5,000,001 - \$15,000,000	
1		P3 -125,000,001 - \$50,000,000		P4 -Mare then \$50,000 000		
1	3. Value Method Codes	Q~Appril	R =Cost (Real Empty Only)	S nAuconomi	T=Outh Market	
Ì	(See Caluma C2)	U =Book Value	V=Other	W = Estimated		
L				****		

FINANCIAL DISCLOSURE REPORT	Name of Parson Reporting	Date of Report
Page 10 of 17	Jackson, Richard B.	09/29/2010
		1

VII. INVESTMENTS and TRUSTS -- income, value, truspections (Includes those of sponse and dependent children; see pp. 34-60 of filling Instructions.)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust masety)	B. Income during, reporting puried		C. Orous value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each mean excurpt from prior disclosure	(i) Amount Code 1 (A-H)	(2) Type (e.g., sliv., real, or int.)	(1) Value Code 2 (J-P)	(Z) Value Meshod Code 3 (Q-W)	(1) Type (o.g., bery, ecti, reducuption)	(2) Dute Month - Day	(3) Value Code 2 (3-P)	(4) Grûn Code 1 (A-H)	(5) Literative of boyortseller (if private transaction)
103. US BANCORP	A	Dividend	ı	т					
104, WELLS FARGO AND CO	Λ	Dividend	J	T					
105. ACCENTURE PLC	A	Dividend	,	Т					
106. APPLE INC	A	None	К	Т					
107. CISCO SYSTEMS INC	^	None	3	Ŧ					
108. GOOGLE INC	Α	None	,	Т					
109, HEWLETT PACKARD CO	Λ	Dividend	J	T					
110. INTEL CORP	A	Dividend	J	т					
III. MASTERCARD INC	A	Dividend	J	Ŧ					
112, MICROSOFT CORP	A	Dividend	J	т					
113. SEMPRA ENERGY	A	Dividend	J	т					
114. ISHARES MSCI EAFE INDEX FD	С	Dividend	М	т					
115. ISHARES MSCI EMERGINO MARKETS FD	Ð	Dividend	к	Т					
116. VANGUARD EXTENDED MARKET VI PERS INDEX FUND	В	Dividend	L	τ					
117. DENVER OF CITY & CTY SCHOOL DS TRICT	В	Interest	L	Т					
118. CASTLE PINES NORTH MET DIST CO	D	înterest	L	т					
119. THORNTON CO DTD	С	Înterest	L	T					

[. Jocotte Chén Codes: (See Cohemat B.) and D4) Velue Codes (See Cohemat C.) and D3)	A =21,000 or lose F =550,001 - \$100,000 1 -515,000 or less N =2150,001 - \$500,000	9 =31,000 - \$2,500 G =5100,001 - 81,000,000 K =515,001 - 530,000 O =5500,001 - \$1,000,000	C=12,561 - 25,000 Hi =31,000,005 - 25,000,000 L =350,001 - 3100,000 P1=11,000,001 - 35,000,000	D=\$5,001 - \$15,000 R2 =86cre tea 25,000,000 M=\$100,001 - \$250,000 P2=\$3,000,001 - \$25,000,000	E =\$15,001 - \$50,000
3. Value Medical Codes (See Cohuna C2)	P3 ~525,000,003 ~ \$30,009,000 Q :::Approise! U ~80 col: Vellan	R =Cost (Roal Essais Cicly) V =Other	P4 =84cms three E50,000,000 S =24cms tores W =5ccms and	T-Cash Marka	

FINANCIAL DISCLOSURE REPORT Page 11 of 17	Name of Person Reporting	Date of Report
Page 11 of 17	Jackson, Richard B.	09/29/2010

VII. INVESTMENTS and TRUSTS - Increase, value, transactions (Includes those of spouse and dependent children; not pp. 34-60 of filling instructions.)

A. Description of Assets (including must assets)	income during reporting period		Gross val	C. se at end of ag period	D. Transactions during reporting period				
Place '(X)" after each asset catempt from prior disclosure	(I) Amount Code I (A-H)	(2) Type (e.g., div., rent, or but)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (a.g., buy, sell, redemption)	(2) Desc Month - Day	(3) Value Code 2 (J-P)	(4) Grain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
20. RANGELY CO SCH DIST RE 4	С	Interest	L	Т			Π	П	
121. SNOWMASS VIG CO	С	Întcrest	Ĺ	т		1		1	
122. FLORIDA HSG FIN CORP REV	В	Interest	к	τ					
123. Univ color enterprise sys rev	С	Interest	L	7					
124. METROPOLITAN TRANSN AUTH NY	С	Interest	L	Т					
125. METRO WASTEWTR RECLAM DSTR CO	С	Interest	T.	Ŧ					
126. BLPASO CTY CO REV	С	Interest	Ĺ	т					
127. BNY MELLON MUNICIPAL OPPORT UNITIES	В	Dividend	к	т					
128, BNY MELLON NATL MUNI MONEY MKT FUND	٨	Dividend	М	Т					
129. HILLSBOROUGH CTY FL BOND	С	Interest							
130. ORACLE CORP	٨	Dividend							
131. COMCAST CORP	٨	Dividend							
32. HUDSON CITY BANCORP INC	Α	Dividend							
33. EXELON CORP	٨	Dividend							
34. AURORA CO BOND	С	Interest							,
35. EATON CORP	Α	Dividend							
136. AMERICAN EXPRESS CO	Α.	Dividend							

1	1, Lacotto Guin Codus;	A =51,000 or leas	B ~\$1,001 - \$2,500	C -52,501 - \$5,000	D =5.5,001 - \$15,000	B =115,001 - 150,000
-	(See Columns III and D4)	F ~\$50,001 - \$100,000	G =\$100,001 - \$1,000,000	900,000.22 - 100,000,12+ fH	H2 -More than \$5,000,000	
- [2. Value Corina	å +415,000 or leta	K =\$15,001 - \$50,000	L =\$10,001 - \$100,000	M -\$100,001 -\$350,000	
- 1	(See Coherens C1 and D3)	N-\$250,001 - \$500,000	O-1100,001 - \$1,000,000	P3 =51,000,001 - 55,000,000	P2 -45,000,001 - 525,000,000	
- 1		P3 -825,000,001 - \$50,000,000		P4 =Mare than \$50,000,000		
- [3. Value Method Codes	Q nApproisal	R =Cop (Red Emm Only)	5 = Assessment	T =C=A Market	
1	(See Column C7)	U =Book Value	V =Other	W -Parimeted		
·						

FINANCIAL DISCLOSURE R	EPOF	TS	Name of Perso	n Reporting					Date of Report
Page 12 of 17			Jackson, Ric	hard B.					09/29/2010
VII. INVESTMENTS and TRU	STS	become, value	, transactions (Includes the	u of the tax and d	eperatori ch	ildren; poe	рр. 34-60	of filling incorporations.)
NONE (No reportable income, as	isels, or	transacti	ons.)						
A. Description of Americ (including treat assets)		B. me during ring period	Gross val	C. ue at end of ng period	D. Transactions during reporting p			; period	
Place "(X)" after each enect exceept from prior disclosure	(1) Amount Code I (A-H)	(2) Type (a.g., div., rest, or lat.)	(1) Valor Code 2 (I-P)	(2) Value Method Code 3 (Q-W)	(1) Type (c.g., buy, acil, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Cain Code 1 (A-H)	(5) Identity of buyer/teller (if private transaction)
137. THE TRAVELERS COMPANIES INC	^	Dividend	T	T		T		П	
138. ISHARES S & P MIDCAP 400	^	Dividend							
139. ISHARES S& P SMALLCAP 600	A	Dividend							
140. NEW JERSEY STATE BOND	c	Interest	1-				1		
141. NORTHERN TR CORP	^	Dividend							· · · · · · · · · · · · · · · · · · ·
142, ALLSTATE CORP	۸	Dividend							
143. OMNICOM GROUP INC	٨	Dividend							
144. 3M CO	A	Dividend				1			
145. JOHNSON CTLS INC	٨	Dividend							
146. CEF SPLECT SECTOR SPDR FD HEAL THCARE	В	Dividend							
147. TECHNOLOGY SELECT SECTOR SPOR FUND	В	Dividend							
148. IRA#2									
149 DREYFUS PILLRO CAP EQ FD	В	Dividead	L	T					
150VANGUARD FTSE ALL WORLD EX US INDEX FD	^	Dividend	К	T					
151VANGUARD EXTEND MKT VIPERS IN DEX FD	A	Dividend	J	T					
152VNY MELLON ENTERM BOND FUND O LASS M	С	Dividend	K	τ					
153. DREYFUS PREMIER LTD TERM HIGH YIELD FD	Α	Dividend	3	т					

1. Income Guin Codes:	A =11,000 or less	B-\$1,001 - \$2,500	C=\$2,501 - \$5,000	D=\$5,001 - \$15,000	E-\$15,001 - \$50,000
(See Columns B) and D4)	F = 150,001 - \$100,000	G-\$100,001 - \$1,000,000	H1 >\$1,000,001 - \$5,000,000	H3 -More than \$1,000,000	
2. Value Codes	7-\$15,000 or less	K-\$13,001 - \$50,000	L -150,001 - \$100,000	M -\$100,001 - \$250,006	
(See Cohumni C1 and D3)	N ~\$250,001 - \$500,000	O -1500,001 - \$1,000,000	P1-\$1,000,001 - \$5,000,000	P2 =\$5,000,001 - \$25,000,000	
	P7 ~525,000,001 - \$50,000,000		P4 =More than \$50,000,000		
3, Value Method Codes	Q:::Appraisa)	R -Cost (Real Estate Only)	8 *Assessment	T -C=b Marke	
(See Column C2)	U -Book Value	V -Other	W-Estimand		

FII	NANCIAL DISCLOSURE REPORT		er [Name of Person Reporting						Date of Report	
Pag	ge 13 of 17			Jackson, Ric	hard R.					09/29/2010	
VII. INVESTMENTS and TRUSTS — brown, value, transactions (including those of species and dependent children; see pp. 34-68 of filling brown column) NONE (No reportable income, assets, or transactions.)											
	A. E. Description of Assets (section of (section) (secti			Gross valu	e at mad of	D. Transactions during reporting period					
	(inclinaing must assers) Place "(X)" after cach assert excemps from prior disclosure		(2) Type (c.g div., rent or int.)	(1) Value Code 2	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Oxio Code I (A-H)	(3) Identity of buyerhelter (if private transaction)	
154.	-AIM STIT TREASURY PORTFOLIO	٨	Interest	, ,	Т		T	Γ		T	
155.	-DREYFUS BOND MKT INDEX BASIC CL	٨	Dividen	d					_		
156.	-DREYFUS BASIC S & P 500	^	Dividen	a							
157.	-ISHARES MSCI EAFE INDEX FD	A	Dividen	d							
158.	-ISHARES MSCI EMERGING MKTS IN DEX FD	A	Divideo	a l							
159.	BROKERAGE ACCOUNT #3										
160.	DREYFUS LARGE FUND GROWTH F UND CLASS I	Α	Divides	d K	Т						
161.	BROKERAGE ACCOUNT #4										
162.	AMERICAN STRATEGIC INCOME P ORTFOLIO	С	Dividen	d K	Т						
163.	CIT GROUP INC NEW		Nenc	J	Т						
164.	GABELLI DIVIDEND & INCOME TRUST	۸	Dividen	d J	T						
165.	AIM INVESTMENT SECS FUNDS INVE SCO	С	Divideo	d K	т						
166.	AIM INVESTM SECS INVESTCO VAN KAMP	В	Dividen	d K	T						
167.	WELLS FARGO FDS TR SPECI TECHN		None	1	Т						
168.	CIT GROUP INC NEW NOTE 5/13	۸	Dividen	d J	т						
169.	CIT GROUP INC NEW 5/14	٨	Dividen	d J	Т			T			

1. Incume Gelo Codes	A =51,000 or loss	B-51,001 - 12,500	C-52,501 -\$5,000	D -\$5,00t - \$15,000	E-\$15,001 - \$50,000
(See Column B1 and D4)	F =250,001 - \$100,000	G =\$100,001 - \$1,000,000	H1 -57,000,001 - \$5,000,000	NO -More than \$3,000,000	
2. Value Codes	J =5) 5,000 cr leas	R\$15,001 - \$50,000	L -550,601 - 5100,000	MT-\$100,001 - \$250,000	
(See Coheren Ct and D3)	N =\$250,001 - \$500,000	000,000.12 - 100,0002= O	F1 ~\$1,000,001 - \$5,000,000	P2 =\$5,000,001 - \$75,000,000	
1	P3 -\$25,000,001 - \$50,000,000		P4 =14cm then \$30,000,000		
3, Value Method Codes	Q=Approint	R =Cost (Real Estate Only)	S -Associational	T-Crah Market	
(Son Column C2)	U-Book Value	V-Ocar	W-Estimated		

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Dividend

170. CIT GROUP INC NEW 5/15

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 14 of 17	Jackson, Richard B.	09/29/2010

VII. INVESTMENTS and TRUSTS - brown, value, trus ons (Includes those of spouse and dependent children; see pp. 34-60 of filing best NONE (No reportable income, assets, or transactions.) C, Orosa value al end of reporting period (1) (2) Value Value Code 2 Method (J-P) Code 1 (O-W) A. Description of Assets (including trust assets) Income during exporting period (1) (2) Amount (2) Type (c.g., Code 1 div., rent, or in.) (2) Value Method Code I (Q-W) (i) Type (e.g., buy, sell, redemption) (3) (4) Value Gaio Code 2 Code 1 (I-P) (A-H) (5) Identity of buyer/seller (if private transaction) Place "(X)" after each asset exempt from prior disclosure 171. CTT GROUP INC NEW 5/16 Dividend 172. CIT GROUP INC NEW 5/17 Dividend J T 173. GENERAL ELEC CAPITAL CORP MID TERM NOTE T A Dividend J 174. WELLS FARGO BANK (VARIOUS A CCOUNTS) Ŧ Interest K 175. TRUST #1 176. -SPDR TRUST SERIES 1 177. -SPDR DOW JONES INDUSTRIAL AVE RAGE 178. -ISHARES MSCI EAFE INDEX FD 179. -ISHARES MSCI EMERGING MARKETS INDEX FUND 180. -VANGUARD EXTENDED MARKET V IPERS INDEX FUND 181. -BNY MELLON NATIONAL INTERMED. ATE MUNICIPAL BD FD 182. -BNY MELLON NATL MUNI MONEY MKT PD 183. -UNITED STATES TREASURY BILL VII 184. -BROOKFIELD L OCAL SCH 3/25% 1/15 /10 185. -DIAMONDS TR 7/13/09 186, TRUST #2 E Int/Div. N Ţ 187. -SPDR TRUST SERIES 1

1. Tegerne Cain Codes:	A =\$1,000 or less	B-\$1,001 - \$2,500	C-\$2,501 - \$5,000	D-55,001 - \$15,000	P =\$15,001 - \$50,000
(See Columns B1 and D4)	F = \$50,001 - \$100,000	G-\$100,001 - \$1,000,000	900,000,22 - 100,000,18- 1H	H2 =Mare thra \$5,000,000	•
7. Value Codes	3 =\$15,000 or feat	K -\$15,001 - \$30,000	L-030,001 - \$100,000	M -0 (00,00) - \$250,000	
(Size Columns C1 and III)	W-\$250,000 - \$500,000	Q ~4.500,001 - \$1,000,000	P5 -\$1,000,001 - \$5,000,000	P2 +\$5,000,003 - \$25,000,000	
	P3 -\$25,000,003 - \$50,000,000		P4 =>4cre than \$30,000,000		
3. Value Method Codes	Q:r/spprisel	R ~Cost (Rost Estate Only)	9 ~Amoussent	T ←Creats Marrieza	
(See Column C2)	U "Book Value	V =Other	W-Estimated		

FINANCIAL DISCLOSURE REPORT			Name of Person Reporting						Date of Report	
Pa	ge 15 of 17			Jackson, R	ichard B.					09/29/2010
VII	. INVESTMENTS and TRUS	STS	-coe, val	we, truspections	(Includes the	or of spense and d	operatent ch	lidron; soc	pp. 34-61) of filling instructions.)
Ш	NONE (No reportable income, as	iets, or	transac.	tions.)						
	A. Description of Asacts (including trust atacts)		B. one during ting period		C. due at end of ing period		Transact	D. kons daring		period
	Place "(X)" after each baset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e. div., res or lat.)	t, Code 2	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, acil, redemption)	(2) Date Month - Day	(2) Value Code 2 (I-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/scRer (if private transaction)
188.	-SPDR DOW JONES INDUSTRIAL AVE RAGE EFF TRUST				T		Ī		<u> </u>	
189.	-ISHARES MSCI EAFE INDEX FD				1					
190.	-ISHARES MSCI EMERGING MKTS IN DEX FUND			1						
191.	-VANGUARD EXTENDED MARKET V IPERS INDEX FUND									
192.	-COLORADO ST BRD GOVERNORS UNI V ENTERPRISE SYS REV DTD 3/13									
193.	-BOULDER CNTY CO SALES USE TAX 2/11									
194.	-BNY MELLON NATL INTERMED M UNIPAL BOND FUND CL M									
195.	-UNITED STATES TREASURY NOTE 3 //1									
196.	-UNITED STATES TREASURY NOTE 7 /12									
197.	-BNY MELLON NATL MUNI MONEY MKT FD M						·			
198.	-UNITED STATES TREASURY BILL 6/10									
199.	-COLO SPOS CO 5.0% BOND 12/9									
200.	-REGIONAL TRANSN DIS 4.8% 11/9									
201.	-DIAMONDS TR									
202.										

1. Income Gain Codes:	A-51.000 g kg	B =\$1,061 - \$7,500			
1, INDOME CHIE COOKS	V -21 York Day	B -21 (OT 15. B	C =53,501 - \$5,600	D=\$\$,001 - \$13,000	E-\$15,001 - \$50,000
(See Columns Bit and 104)	P-830,001 - \$100,000	G =\$100,001 - \$1,000,000	900,000,28 ~ 100,000,12~ 116	112 - Micros streen \$5,000,000	
2. Value Codes	J=\$15,000 or less	IC=\$15,001 - \$50,000	L -450,001 - \$100,000	M =\$100,001 - \$750,000	
(See Cohanna C1 and D3)	H =\$250,001 -\$300,000	0 -\$500,001 - \$1,000,000	P1 =\$1,000,001 - \$3,000,000	P2 =\$5,000,001 - \$25,000,000	
1	PJ -525,000,003 + \$50,000,000		P4 = Micro than \$50,000,000		
3. Value Method Codes	Q vrAppyraise!	R "Cost (Newl Estate Only)	\$ 9Atocomogs	T-Chair Market	
(Sen Column (C2)	U -Book Value	V=0ther	W-Faireard		

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FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 16 of 17	Jackson, Richard B.	09/29/2010
		<u> </u>

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Region).

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 17 of 17	Jackson, Richard B.	09/29/2010
	j	í

IX. CERTIFICATION.

I certify that all information gives above (including information pertaining to my spouse and minor or dependent children, if any) is accomplete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-declosure.

I further certify that carned Income from conside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Jackial Conformer regulations.

Signature Richard B. Jackson

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIPIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (S U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		28	465	Notes payable to banks-secured			
U.S. Government securities—see schedule		343	112	Notes payable to banks-unsecured			
Listed securities—see schedule	3	932	982	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable —primary residence		146	334
Real estate owned—primary residence		900	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		85	840				
Cash value-life insurance							
Other assets itemize;							
				Total liabilities		146	334
				Net Worth	5	144	060
Total Assets	5	290	399	Total liabilities and net worth	5	290	394
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor —child's home loan	1	125	000	Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	МО		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

216

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
U.S. Treasury Notes	\$ 290,405
U.S. Treasury Inflation Indexed Bond	52,707
Total U.S. Government Securities	343,112
	2 .2,2
<u>Listed Securities</u>	
Account #1	
VANGUARD VALUE VIPERS	
VANGUARD VALUE VIFERS VANGUARD FTSE ALLWORLD EX US	\$ 62,455
VANGUARD EXTENDED MARKET VIPERS	39,613
VANGUARD GROWTH VIPERS	31,392
BNY MELLON NATIONAL INTERMED MUN BOND	64,006
BNY MELLON MUNICIPAL OPPORTUN FUND	47,751
CRA BNY MELLON	10,331 11,514
ACCRUED INCOME	350
Account #2	330
SPDR TRUST V SERIES 1	227,996
SPDR DOW JONES INDUSTRIAL AVERAGE	231,462
ISHARES MSCI EAFE INDEX FD	159,808
ISHARES TR S&PMIDCAP400 INDEX	109,744
ISHARES RUSSELL 1000 INDEX FD	146,488
ISHARES TR S&PSMALLCAP 600	51,919
VANGUARD EMERGING MARKETS ETF	59,568
FEDERAL HM LN MTGE CORP	50,250
FEDERAL HOME LOAN BANK	103,500
FEDERAL NATL MTG ASSN	54,438
FEDERAL HOME LN MTG CORP FEDERAL HOME LOAN BANKS	52,380
AETNA INC	58,094
WELLS FARGO COMPANY	25,955
PFIZER INC	26,886
GOLDMAN SACHS GROUP INC	27,535
GENERAL ELEC CAP CORP	26,810
AT&T INC	27,615 28,857
ISHARES S&P GSCI COMMODITY	15,835
THE AIM STIT TREASURY PORTFOLIO	82,791
ACCRUED INCOME	8,315
Account #3	0,515
PIMCO TOTAL RETURN FUND	46,388
DODGE AND COX BALANCED FUND	34,300
DODGE AND COX STOCK FUND	10,413
FIDELITY CONTRAFUND	12,538
RAINIER LG CAP GROWTH EQUITY	9,758
AMERICAN FUNDS EUROPACIFIC GR	12,981
Account #4	
CHEVRON CORP	40,300
EXXON MOBIL CORP	85,710
AIR PRODUCTS & CHEMICALS EMERSON ELECTRIC	22,209
GENERAL ELECTRIC CO	16,561
SECOND DEED INC CO	8,688

UNION PAC CORP	16,412
UNITED TECHNOLOGIES CORP	19,563
THE WALT DISNEY COMPANY	8,623
JOHNSON CTLS INC	5,969
STARBUCKS CORP	101,112
NESTLE S A SPONSORED ADR REPSTG REG	39,951
PEPSICO INC	25,672
THE PROCTER & GAMBLE CO	46,841
ABBOTT LABORATORIES	8,635
JOHNSON & JOHNSON PFIZER INC	39,914
TEVA PHARMACEUTICAL INDS LTD ADR	9,069
THERMO FISHER SCIENTIFIC INC	8,859
INVESCO LIMITED	9,477
ACE LTD	8,617
JP MORGAN CHASE & CO	16,041
MORGAN STANLEY	12,726
STATE STREET CORP	6,173
US BANCORP	7,542 7,592
WELLS FARGO & COMPANY	14,130
ACCENTURE PLC	14,640
APPLE INC	15,802
CISCO SYSTEMS INC	13,990
GOOGLE INC	9,000
HEWLETT PACKARD CO	9,997
INTEL CORP	14,132
MASTERCARD INC	8,926
MICROSOFT CORPORATION	10,442
SEMPRA ENERGY	10,184
ISHARES MSCI EAFE INDEX FD	108,120
ISHARES MSCI EMERGING MARKETS INDEX	38,858
VANGUARD EXTENDED MARKET VIPERS	86,701
DENVER CO CITY & CNTY SCH DISTR	50,318
CASTLE PINES NORTH MET DIST COLO	80,672
THORNTON CO DTD	57,227
RANGELY CO SCH DIST RE 4	56,974
SNOWMASS VIG CO	57,508
FLORIDA HSG FIN CORP REV	35,250
UNIVERSITY COLO ENTERPRISE SYST REV	51,749
METROPOLITAN TRANSN AUTH NY	54,315
METRO WASTEWTR RECLMATION DIS COLO	54,212
EL PASO CNTY COLOR REV	56,372
BNY MELLON MUNIPICAL OPPORTUNITIES FD	25,829
BNY MELLON NATL MUNI MONEY MKT FD M	174,292
ACCRUED INCOME	6,971
Account #5	
DREYFUS PR LRGE CAP EQ	55,256
VANGUARD FTSE ALL WORLD EX US	15,394
VANGUARD EXTENDED MARKET VIPERS	12,386
BNY MELLON INTERMEDIATE BOND FUND CL M	47,078
DREYFUS PREMIER LTD TERM HIGH YIELD FUND	4,492
THE AIM STIT TREASURY PORTFOLIO ACCRUED INCOME	9,971
ACCRUED INCOME Account #6	12
DREYFUS LARGE CAP GROWTH FUND CLASS I	22.00-
SWELL OF EVICOR CAL OROM LIL LOUD CEN22 I	22,027

Account #7 AMERICAN STRATEGIC PORTFOLIO INCOME INC CIT GROUP INC NEW GABELLI INCOME AND DIVIDEND TRUST VAN KAMPEN CORP BOND FUND VAN KAMPEN HIGH YIELD FUND CLASS A WELLS FARGO FUNDS SPECIALIZED TECH	15,600 4,475 10,927 24,690 20,389
CIT GROUP NEW RED NOTE SER A CIT GROUP NEW SECURED NOTE SER A GENERAL ELECTRIC CAPITAL MED. TERM NOTE ACCRUED INTEREST	12,807 1,407 2,072 2,046 3,371 4,671 5,006
Total Listed Securities	\$ 3,932,982

AFFIDAVIT

I,	Richard	Brooke	Jackson din this statement		do	swear
that	the informat	ion provide	d in this statement	is.	to	the best
of my	knowledge,	true and ac	curate.			

(DATE)

Richard Brule Jahren

(NAME)

Deldish Kinnly

(NOTARY)

(EMPRESON: 11/20/2012

3



January 5, 2011

Hon. Patrick J. Leahy Chairman, Committee on the Judiciary United States Senate Washington DC 20510

Dear Mr. Chairman:

I have reviewed the Questionnaire for Judicial Nominees and supplemental materials dated October 1, 2010 that were filed with the Senate Judiciary Committee following my nomination for the United States District Court for the District of Colorado. With the following exceptions, I certify that the information contained in my prior submissions is, to the best of my knowledge, true and accurate:

Question 12(d):

Panelist, Winning Trial Tactics and Skills, section on "Rapport with Judge and Jury," sponsored by Colorado Bar Association and American College of Trial Lawyers, November 12, 2010. My only written material was a copy of my article, "Joe DiMaggio and You," 37 The Colorado Lawyer 65 (April 2008)(copy previously supplied).

Question 13(f) (Court of Appeals opinions):

People v. Jones, No. 07CA1984 (Slip. Op. December 2, 2010)(affirming judgment of conviction and sentence to life in prison without parole, one victim, but remanding for resentencing on a separate conviction of attempted first degree murder, different victim)(copy enclosed)

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

Ficher Porovla Control
Richard Brooke Jackson

CC: Hon. Charles Grassley

07CA1984 Peo v. Jones 12-02-2010

COLORADO COURT OF APPEALS

Court of Appeals No. 07CA1984 Jefferson County District Court No. 05CR4231 Honorable R. Brooke Jackson, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Kenji Myricks Jones,

Defendant-Appellant.

JUDGMENTS AFFIRMED, SENTENCE VACATED, AND CASE REMANDED WITH DIRECTIONS

Division III
Opinion by JUDGE DAILEY
J. Jones and Lichtenstein, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(f)

Announced December 2, 2010

John W. Suthers, Attorney General, John T. Lee, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Law Offices of Jonathan S. Willett, Jonathan S. Willett, Denver, Colorado, for Defendant-Appellant

Defendant, Kenji Myricks Jones, appeals the judgments of conviction entered on jury verdicts finding him guilty of first degree murder, attempted first degree murder, two counts of aggravated robbery, three counts of possession of a controlled substance, and possession of more than eight ounces of marijuana. We affirm the judgments of conviction, vacate defendant's sentence for attempted murder, and remand for resentencing on that conviction.

I. Background

Defendant was charged as a result of an incident in which he and two other men allegedly used guns to forcibly enter the Arvada home of two of their long-time friends, one of whom was a drug dealer. Inside the home, the three men stole drugs (including ecstasy, mushrooms, cocaine, and marijuana), money, and other valuables from the occupants, taunted and terrorized them with a knife, and, ultimately, shot them both in the head. The female occupant died; the male survived and testified at trial.

In addition to the male victim's testimony, the prosecution also presented evidence that (1) defendant and the two other men were seen together talking, in a secretive manner, at a bar a few hours

before the robbery; (2) defendant owned a gun; (3) after the robbery, defendant stored white plastic bags filled with drugs at a coworker's home; (4) defendant tested positive for gunshot residue when he was arrested a day after the incident; and (5) latex gloves found in a trash can in defendant's front yard had both his and the female victim's DNA on them.

In his defense, defendant asserted that (1) the surviving victim identified him and the other two men as perpetrators of the incident to divert attention away from the fact that he (the surviving victim) shot the female victim in an act of domestic violence; (2) defendant was inebriated when he left the bar that evening (and thus, presumably, did not have sufficient mental or physical ability to assist in the episode); (3) gunshot residue is easily transferable; and (4) the DNA found on the gloves was from a time, three days before the incident, when defendant was with both victims.

The jury convicted defendant of the numerous charges against him, and the trial court sentenced him to an aggregate term of life imprisonment without the possibility of parole, plus eighty years.

II. Substitution of Counsel

Defendant contends that the trial court abused its discretion when it failed to appoint substitute counsel, despite an apparent breakdown in communications between himself and his attorney.

We disagree.

A. Facts

Four months before a date scheduled for trial (and approximately ten months before trial actually commenced), defendant filed a pro se request for substitute counsel and had his attorney file a motion to withdraw from the case. In the letter accompanying his pro se motion, defendant alleged, as grounds for a change in counsel, that

- his attorney had made a comment which, in defendant's view,
 reflected a lack of belief in his cause and raised, in defendant's mind, the question as to whether the attorney would or could provide proper representation on his behalf;
- his attorney had become upset when defendant expressed his
 desire to have him dismissed and again when defendant asked
 "why [he] had not received a copy of discovery";

- he was unable to contact his attorney because (1) the attorney
 would not accept collect calls, and (2) the attorney's
 suggestion that he communicate with him through defendant's
 mother was impractical, given his mother's limited financial
 ability to receive collect calls and her difficulty, due to
 advanced age, in repeating important questions or answers;
 and
- in the previous five months, he had only seen or spoken to his attorney "a total of three times other than in court, . . . and that was only for a minute or two."

Correspondingly, at defendant's request, his attorney filed a motion to withdraw, in which he asserted that "the attorney-client relationship has deteriorated to the point that counsel can no longer meaningfully represent the defendant," because of "numerous and protracted disagreements . . . regarding strategy and litigation in this case."

Within days of the filing of these motions, the trial court –
through a different judge – conducted a hearing at which defendant,
given the opportunity to elaborate on his complaints, said only, "I

haven't received discovery[,]... basically I'm left in the dark[,]... [and] I feel like he's not going to represent me or fight for me." In response to defendant's comments and what appeared to the court to be a normal "communication issue," the attorney

- confirmed that he would "[a]bsolutely" work on finding a workable way of communicating with defendant;
- stated that defendant had, while in jail, viewed on DVD most
 of the discovery, until he said "he didn't want to see any
 more";
- acknowledged that there was a time in which he had not
 communicated with defendant, but explained that during that
 time he was attempting to negotiate a plea, which depended,
 in part, on input from another prosecutor's office, input which
 was not forthcoming for months: "In that time I really had
 nothing to talk about with [defendant] because we were
 awaiting . . . input" from the other prosecutor's office; and,
- opined that defendant's disappointment with him stemmed from the "harsh" plea offer that was ultimately made in the case, and that he feared he and defendant would not have a

productive working relationship in the future because of defendant's deterioration of trust in him.

Based on what it had heard, the court denied the motions for withdrawal and substitution for counsel, finding that (1) there was no animosity between defendant and his attorney; (2) "there's no indication of any ethical problem" between defendant and his attorney, (3) "there is no indication . . . that [the attorney] is not going to be able to provide effective assistance of counsel," and (4) the extent of any future communication, or whether there would be a breakdown in communication, "was solely within the province of [defendant] to determine."

Approximately seven weeks later, defendant's attorney filed a second motion to withdraw from the case, repeating the contents of his earlier motion, but adding that, because of his disagreements with defendant, "it has become impossible for counsel to effectively represent" defendant and "there has been a complete breakdown in communications" between them.

The trial court - again acting through the different judge - conducted a hearing on the motion. At the hearing, defendant said

that he had filed a grievance against his attorney with the supreme court. When asked by the trial court whether it was "because of lack of contact or lack of ability," defendant responded, "I'm not happy with his performance. I don't think he's representing me the way he should." Later, he affirmed, as "correct," the court's understanding that he had "issues communicating and [he] did not like the course that [his] case was taking with [his] current attorney." After the court warned defendant that it would not change counsel based on defendant's refusal to talk to or cooperate with his attorney, defendant stated that he was "not happy with the representation" because, unlike his codefendants, he did not have an investigator assigned to his case. He indicated that he had talked with his attorney, but only for a few minutes, two or three weeks earlier.

In response to defendant's comments, his attorney said that

- he had hired an experienced investigator, who had indeed met with defendant;
- · a co-counsel had been appointed in the case;

- defendant had sent him a letter asking him to not visit defendant anymore; and,
- the problem, as he saw it, was that defendant had interpreted counsel's request for defendant's input as an indication that counsel did not know what he was doing.

During the course of the hearing, the court determined that (1) there was not an ethical issue other than that defendant "was unhappy about the communication and with what he perceives as being [the] planned defense in the case" and (2) this was insufficient justification for requiring a substitution of counsel. Defendant agreed that he would meet and cooperate with his lawyers and investigator.

Defendant made no further complaint about his attorneys for the remainder of time leading up to trial, that is, for eight months.

B. General Principles and Standard of Review

"An attorney's motion to withdraw, as well as a defendant's motion to discharge an attorney, are matters addressed to the sound discretion of the trial court, whose ruling will not be disturbed on review absent a clear abuse of discretion." People v.

Hodges, 134 P.3d 419, 425 (Colo. App. 2005), affd, 158 P.3d 922 (Colo. 2007).

"[I]f the trial court has a reasonable basis for concluding that the attorney-client relationship has not deteriorated to the point at which counsel is unable to give effective assistance in the presentation of a defense, then the court is justified in refusing to appoint new counsel." *People v. Rocha*, 872 P.2d 1285, 1289 (Colo. App. 1993).

When a defendant objects to court-appointed counsel, the trial court must inquire into the reasons for the dissatisfaction. People v. Kelling, 151 P.3d 650, 653 (Colo. App. 2006). An indigent, defendant is not, however, entitled to new counsel absent a showing of good cause therefor, such as a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict with appointed counsel that may lead to an apparently unjust verdict. Id.

Disagreements about matters of trial preparation, strategy, and tactics do not establish good cause for substitution of counsel.

Id. Similarly, "[t]he mere loss of confidence in his appointed

counsel does not establish 'good cause'"; the "[d]efendant must have some well founded reason for believing that the appointed attorney cannot or will not competently represent him." 3 Wayne R. LaFave, Jerold H. Israel, Nancy J. King & Orin S. Kerr, Criminal Procedure § 11.4(b), at 703-04 (3d ed. 2007).

C. Analysis

Initially, we observe that, during the course of the two hearings, the court gave defendant ample opportunity to state the grounds of his dissatisfaction with his lawyer.

Next, we reject defendant's assertion that the trial court misunderstood or misapplied the applicable legal standard for determining whether appointment of new counsel was warranted. Although, at different times, the court said that there was no ethical reason to require substitution of counsel, it did not confine its analysis to that factor alone. Instead, during both hearings, the

¹ We note, in this regard, that the fact that defendant filed a grievance with the supreme court did not require disqualification of his trial counsel. See People v. Martinez, 722 P.2d 445, 446 (Colo. App. 1986) ("The mere filing of a grievance because of disagreement as to trial tactics does not, without more, demonstrate that the relationship has deteriorated to a point at which counsel is unable to give effective aid to the client.").

court recognized that there appeared to be some type of communication problem, just not of a type or degree that would warrant appointment of new counsel.

To warrant discharge of original counsel and appointment of a new one, defendant had the burden of showing a "complete breakdown in communications.": Kelling, 151 P.3d at 653. In United States v. Lott, 310 F.3d 1231, 1249 (10th Cir. 2002), the Tenth Circuit Court of Appeals noted:

The types of communication breakdowns that constitute "total breakdowns" defy easy definition, and to our knowledge no court or commentator has put forth a precise definition. As a general matter, however, we believe that to prove a total breakdown in communication, a defendant must put forth evidence of a severe and pervasive conflict with his attorney or evidence that he had such minimal contact with the attorney that meaningful communication was not possible.

See also Kelling, 151 P.3d at 656 (the defendant's burden was to show "a completely fractured relationship with appointed counsel because of . . . a total breakdown in communication").

Whether a defendant has substantially and unreasonably contributed to the underlying conflict with his attorney, or to a

breakdown in communications between them, has been identified as a factor in assessing whether new counsel should be appointed. See People v. Bergerud, 223 P.3d 686, 695, 705 (Colo. 2010) (citing Lott, 310 F.3d at 1250-51).

Here, the record does not reveal an attorney-client relationship shorn by such a severe and pervasive conflict or by such minimal contact that meaningful communication was not possible. Instead, it reveals that (1) defendant's disagreements with his counsel centered on counsel's inability to obtain a better plea offer and other strategic matters; (2) counsel had provided defendant access to discovery; (3) there was a period of time in which counsel had not contacted defendant because there was nothing new to talk about; (4) counsel was willing to find more workable ways of communicating with defendant; and (5) though defendant had, at times, refused or resisted efforts to be contacted by counsel or his assistants, he ultimately agreed to meet and cooperate with his attorneys and investigators.

From these facts, and the fact that defendant made no further complaint about his attorney in the eight months leading up to

trial, we perceive no abuse of the court's discretion from its denial of the motions for withdrawal and substitution of counsel. Cf. People v. Thornton, __ P.3d __, __ (Colo. App. No. 08CA1027, Sept. 30, 2010) (no complete breakdown in communication where, although trial counsel acknowledged that "there have been a lot of communication breakdowns," he maintained that he was continuing to represent the defendant's interests and "had a number of visits with" the defendant); People v. Gonyea, 195 P.3d 1171, 1173 (Colo. App. 2008) (no abuse of discretion in declining to dismiss counsel where the defendant's own actions had contributed to the problems between them and, because the defendant and his attorney agreed to resolve their differences and cooperate, there was no breakdown of communication); Hodges, 134 P.3d at 425-26 (attorney's statement that he was "concerned that we're not truly communicating" did not require a finding of a complete breakdown of communication); People v. Jenkins, 83 P.3d 1122, 1126 (Colo. App. 2003) (the defendant's allegations that counsel was not defending him zealously, had not spent adequate time with him, had met with him only once in nine months, had not discussed

potential witnesses, and had not given him copies of discovery did not show a complete breakdown of communication).

III. Relieving the Prosecution of Its Burden of its Proof

Next, defendant contends that reversal is required because, during jury voir dire, the trial court made a statement that relieved the prosecution from its burden of proving that a murder and an assault occurred. Again, we disagree.

A. Facts

At defendant's request, the court, during voir dire, told the prospective jurors of the names of the other two suspects to ensure that no one knew them. One prospective juror indicated she had heard about them or the incident, and that it involved "murder or shootings." Subsequently, another prospective juror said that she may have trouble being fair and impartial knowing that there was a murder involved. In response, the court said:

There was a person shot to death. That's not going to be disputed. There was a person shot and wounded. That won't be disputed either. The dispute concerns whether [defendant] was involved. And if he was involved in any part of the incident, whether he is guilty of what he is charged with. None of us have to think murder is a good idea. Of course not. It's not.

Murder is the most serious level of felony crime that we have in our system. But the issue here is whether or not [defendant] is guilty. Regardless of what [the other gunmen] did or didn't do, regardless of whether they've been tried and convicted or not, the issue in this case is what, if any, participation did [defendant] have? And more specifically, beyond a reasonable doubt, did he do what he's accused of doing? That's it.

Defendant subsequently moved for a mistrial on the grounds that the court had wrongfully relieved the prosecution of its burden of proof by stating that there was no dispute as to whether a murder occurred. The court denied the motion, noting that it thought it only said "there's no dispute there was a shooting." The court indicated that it would consider any curative instruction proposed by defendant. Although defendant never tendered a curative instruction, the court gave one sua sponte.

B. General Legal Principles & Analysis

The prosecution must prove every element of a charged crime beyond a reasonable doubt. *People v. Dunaway*, 88 P.3d 619, 627 (Colo. 2004). As a result, a trial court errs when it instructs a jury that, as a matter of law, the prosecution has satisfied its burden of proving one of the elements, thereby withdrawing that

element from the jury's consideration. *People v. Gracey*, 940 P.2d 1050, 1053 (Colo. App. 1996).

Here, we perceive nothing improper about the court's remarks. Contrary to defendant's assertion, the trial court did not tell the jury that "a murder and assault occurred." Indeed, the court did not refer to an assault at all and its only references to murder were general remarks about its seriousness and that no one had to think it was a "good idea."

The only things the court said were undisputed were that one person was shot to death, while another person was shot and wounded. The court was correct, and its recitation of those facts did not, in any way, indicate that a murder – or an assault – had in fact been committed.

Moreover, the court, on its own accord, informed the jury, after defendant's motion for mistrial:

I think it's not disputed that one person was killed and one person was injured . . . it's disputed for what role, if any, the defendant had in any of it. But if I said that it's undisputed that a murder took place, murder really is a technical term. And the People have to prove that a murder took place, as well as . . . if this defendant had any role in it . . . I think

it's just undisputed that there was an incident where someone was killed and someone was injured, and the rest of it has to be proven.

In our view, this instruction sufficed to alleviate any potential prejudice occasioned by the court's earlier remark. See People v. Mersman, 148 P.3d 199, 203 (Colo. App. 2006) (generally, curative instructions will remedy any harm caused by a prejudicial statement); People v. McNeely, 68 P.3d 540, 542 (Colo. App. 2002) (curative instruction "inadequate only when evidence is so prejudicial that, but for its exposure, the jury might not have found the defendant guilty") (quoting People v. Gillispie, 767 P.2d 778, 780 (Colo. App. 1988)); cf. Edmisten v. People, 176 Colo. 262, 276, 490 P.2d 58, 65 (1971) ("error in admitting evidence may be cured by instructing the jury to disregard it unless such evidence is so prejudicial that the jury will unlikely be able to erase it from their minds").

Also, the court instructed the jurors regarding the presumption of innocence and the burden of proof, and, absent evidence to the contrary, we presume they followed those

instructions. See, e.g., People v. McKeel, __ P.3d ___, __ (Colo. No. 10SA164, Oct. 18, 2010).²

IV. Hearsay & Confrontation

We are also unpersuaded by defendant's contention that reversal is required because the trial court erroneously admitted several hearsay statements in violation of his constitutional right to confront adverse witnesses.

A. Facts

During trial, the following evidence was admitted:

² Defendant appears to argue that the prejudice from the court's comment was heightened or revealed when (1) the court, ostensibly in response to his motion for mistrial, admitted evidence of another codefendant's subsequent purchase of a gun, and (2) the jury inquired, during deliberations, about the applicability of a complicity instruction to the charges. We have, however, already determined that the court's comments were not prejudicial. And because, by defendant's own admission, "the motion for mistrial has no bearing on the admissibility of evidence," and because defendant did not raise the evidentiary or jury inquiry issues as separate claims of error, or support them with either authority or developed argument, we decline to address those issues. See People v. Wallin, 167 P.3d 183, 187 (Colo. App. 2007) (declining to address arguments presented in a perfunctory or conclusory manner); see also United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991) ("A skeletal 'argument,' really nothing more than an assertion, does not preserve a claim [for appellate review].").

- a police officer recounted what the surviving male victim told
 him on the way to the hospital about the incident;
- the male victim testified that, during the robbery, the female victim asked defendant, "How can you do this? You're like my brother," to which defendant responded, "It is what it is";
- a detective testified that the male victim had told him at the
 police station that he was concerned that the men responsible
 for the robbery and shootings "were going to kill his family";
 and,
- the same detective testified that, when asked at the station
 whether he shot the female victim in a domestic dispute and
 then shot himself to make it look like a murder-suicide, the
 male victim said, "That did not happen."

Defendant objected to the first two statements as hearsay and to the last two statements on both hearsay and confrontation grounds. The trial court ruled that the first statement was admissible as an excited utterance and that the second statement was admissible because it was not offered for the truth of the matter asserted (and, thus, was not hearsay). The court overruled

defendant's objections to the last two statements without making any additional findings.

B. General Legal Principles and Standard of Review

Hearsay is defined as "a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." CRE 801(c); see People v. Huckleberry, 768 P.2d 1235, 1241 (Colo. 1989). Hearsay is inadmissible, unless it falls within an exception to the rule against hearsay. CRE 802.

An out-of-court statement offered, not for the truth of the matter it asserts, but solely to show its effect on the listener, is not hearsay. *People v. Rodriguez*, 888 P.2d 278, 287 (Colo. App. 1994).

The admission of hearsay evidence may implicate a defendant's confrontation rights under the federal and state constitutions. See Davis v. Washington, 547 U.S. 813, 823, 126 S.Ct. 2266, 2274, 165 L.Ed.2d 224 (2006) (admission of "testimonial" hearsay violates federal confrontation rights); Compan v. People, 121 P.3d 876, 882-86 (Colo. 2005) (admission of nontestimonial hearsay as violative of state confrontation rights).

However, the admission of nonhearsay does not implicate a defendant's confrontation rights. Crawford v. Washington, 541 U.S. 36, 59 n.9, 124 S.Ct. 1354, 1369, 158 L.Ed.2d 177 (2004) ("The [Confrontation] Clause . . . does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted."); People v. Isom, 140 P.3d 100, 103 (Colo. App. 2005) (no right of confrontation or hearsay preclusion exists when statements are not offered for their truth); People v. Bornman, 953 P.2d 952, 956 (Colo. App. 1997) (because the information was not hearsay, "no issue of confrontation is presented").

Trial courts have considerable discretion in determining the admissibility of evidence, and we will not disturb their evidentiary determinations on appeal absent a showing of an abuse of discretion. *People v. Boykins*, 140 P.3d 87, 95 (Colo. App. 2005).

C. Analysis

Initially, we note that, although defendant properly preserved his hearsay objections in the trial court, he has not properly presented some of them to us for review. See Roca v. E.I. du Pont de Nemours & Co., 842 A.2d 1238, 1242 (Del. 2004) ("If an appellant

fails to comply with [the] requirements [of presenting an argument] on a particular issue, the appellant has abandoned that issue on appeal irrespective of how well the issue was preserved at trial.").

For instance, defendant has provided no argument challenging the trial court's determination that the account given by the victim on the way to a hospital was, if hearsay, admissible as an excited utterance. Because he has not challenged that part of the trial court's ruling, his challenge to the admissibility of the victim's account is not properly before us. *Cf. IBC Denver II, LLC v. City of Wheat Ridge*, 183 P.3d 714, 717 (Colo. App. 2008) (it is incumbent on the appellant to challenge on appeal all stated reasons or grounds for the trial court's decision, and failure to do so requires affirmance of the trial court's ruling).³

With respect to the other statements, defendant does not attempt to show how they were admitted for the truth of the matter,

³ By its nature, an excited utterance is unlikely to be "testimonial" hearsay implicating confrontation rights. See People v. King, 121 P.3d 234, 240 (Colo. App. 2005). In any event, the admission of hearsay from a witness who, like the male victim, testifies at trial and is subject to cross-examination does not violate a defendant's right to confrontation. See People v. Argomaniz-Ramirez, 102 P.3d 1015, 1019 (Colo. 2004).

and, thus, qualified as hearsay. Instead, he equates truth of the matter asserted with whether the statement was important to the prosecution's case or prejudicial to his own.

Because the prosecution was not trying to prove the truth of the matter asserted in the female victim's statement (that is, how could defendant do this, since he and she were indeed like family), it was not admitted for a hearsay purpose. Indeed, it was admitted for nonhearsay purposes, that is, for its effect on the listener (here, defendant), see Rodriguez, 888 P.2d at 287, and for providing context for his response. A See People v. Arnold, 826 P.2d 365, 366 (Colo. App. 1991).

Similarly, although at trial the prosecution proffered the third statement as an excited utterance, the value of that statement did not depend on the truthfulness of its content, that is, whether the

⁴ An out-of-court statement to another person "is not subject to attack as hearsay when its purpose is to establish the state of mind thereby induced in [the other], such as receiving notice or having knowledge or motive, or to show the information which [the other] had as bearing on the reasonableness, good faith, or voluntariness of subsequent conduct " 2 McCormick on Evidence § 249, at 134-35 (K Broun 6th ed. 2006). It is not hearsay because the value of the statement does not depend upon its truth. Id. at 135.

men who perpetrated the robbery and shootings would, in fact, kill the surviving victim's family members. Regardless of its truth, the statement tended to explain why (i.e., fear) the surviving victim delayed identifying his assailants. As such, the statement was not inadmissible as hearsay. See 2 McCormick on Evidence § 249, at 133 (statement is not hearsay when its value does not depend upon its truth); cf. People v. Mossman, 17 P.3d 165, 168 (Colo. App. 2000) (trial court should have permitted the testimony of two witnesses who would have substantiated the defendant's affirmative defense that he took his daughter from his ex-wife because he believed she was being abused while living with his ex-wife and another man).5

SAlso, the detective had previously related to the jury this very same statement, without objection; and, the victim himself had testified that he delayed identifying his assailants out of fear for his family's safety. The statement to which defendant objected was, then, cumulative to other evidence admitted in the case. See People v. Caldwell, 43 P.3d 663, 668-69 (Colo. App. 2001) (holding that because the statements challenged as inadmissible hearsay were merely cumulative of other evidence, their admission was harmless beyond a reasonable doubt); People v. Robinson, 874 P.2d 453, 461 (Colo. App. 1993) (any violation of the defendant's confrontation clause rights was harmless beyond a reasonable doubt because hearsay testimony at issue was merely cumulative).

Finally, although a somewhat closer question, we perceive no abuse of the court's discretion in admitting evidence of the male victim's out-of-court denial of killing his companion. Just before the statement was mentioned, the prosecution had elicited evidence from the detective that "Everybody" – including the male victim – was a "possible suspect at that point." Thus, the detective's follow-up inquiry, and the victim's answer thereto, can be viewed as explaining, in part, why the police investigation proceeded as it did – a nonhearsay purpose. See People v. Robinson, 226 P.3d 1145, 1152 (Colo. App. 2009).

Because all three of these statements were not inadmissible hearsay, admitting them necessarily did not violate defendant's confrontation rights. Consequently, we perceive no grounds for reversing defendant's convictions.

V. Sentencing

We are, however, persuaded by defendant's contention that his case must be remanded for resentencing on his conviction for attempted first degree murder.

A remand for resentencing is appropriate where a trial court misapprehends the scope of its discretion: for example, where a trial court imposes consecutive sentences under the mistaken belief that it has no discretion to impose concurrent sentences. *People v. O'Connell*, 134 P.3d 460, 466 (Colo. App. 2005).

Here, the trial court sentenced defendant to forty-eight years imprisonment for the attempted murder consecutive to his sentence to life without parole for the murder. In so doing, the court stated its belief that the law mandated a consecutive sentence because attempted first degree murder is a crime of violence. However, in the absence of a special interrogatory, as here, attempted first degree murder is not a crime of violence. § 18-1.3-406(6), C.R.S. 2010; People v. Webster, 987 P.2d 836, 843 (Colo. App. 1998). Therefore, the trial court was mistaken when it twice said that it was required to impose a consecutive sentence for the attempted murder conviction.

Accordingly, we vacate that sentence and remand for resentencing on that conviction alone. Compare O'Connell, 134 P.3d at 466-67 (affirming the defendant's conviction where trial

court never indicated that it believed that consecutive sentences were required and it indicated that it had reviewed and considered the case law pertaining to consecutive and concurrent sentencing), with People v. Smith, 881 P.2d 385, 390 (Colo. App. 1994) (vacating and remanding for resentencing three of the defendant's convictions because the trial court mistakenly believed that consecutive sentences were mandated by statute).

In reaching this conclusion, we necessarily reject the prosecution's assertion that a remand is unnecessary because "it appears that the district court would have imposed consecutive sentences if it believed it had the discretion [] to do so." Our reading of the record does not disclose a clear intent one way or the other on the issue.

The judgments of conviction are affirmed, the sentence on the attempted murder conviction is vacated, and the matter is remanded for resentencing.

JUDGE J. JONES and JUDGE LICHTENSTEIN concur.

AO 10 Rev. 1/2008

FINANCIAL DISCLOSURE REPORT NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

NOMINA	ATTOM FIGHT	(3 O.S.C. app. §§ 101-111)
1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Jockson, Richard B.	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO	01/05/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	Sa. Report Type (check appropriate type)	6. Reporting Period
	Nomination, Date 01/05/2011	01/01/2010
DISTRICT JUDGE	Inicial Annual Final	01/05/2011
	Sh. Amended Report	01703/2017
7. Chambers or Office Address	8. On the basis of the information contained in this Report and an	
100 JEFFERSON COUNTY PARKWAY	modifications pertaining thereto, it is, in my opinion, in compli with applicable laws and regulations.	ance
DIVISION 6 GOLDEN CO 80401		
GOLDEN CO 80407	Raviewing Officer	Date
IMPORTANT NOTES: The instru checking the NONE hox for each na	ctions accompanying this form must be followed. Complete al et where you have no reportable information. Sign on læst pag	l parts, e.
I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing	instructions.)	
NONE (No reportable positions.)		
POSITION	NAME OF ORGANIZ	ATION/ENTITY
I.		
2.		
3,		
4		
5.		
II. AGREEMENTS. (Reporting individual only; see pp. 14-16	i of Attue instructions i	
NONE (No reportable agreements.)		
NONE (No reputable agreements.)		
<u>DATE</u>	PARTIES AND TERMS	
1.		
2.		
3.		
J.		

FINANCIAL DISCLO Page 2 of 14	OSURE REPORT	Name of Person Report	= '		Onte of Report 01/05/2011
III. NON-INVESTME	NT INCOME. (Reparting	; individual and sponse; we	c pp. 17-24 of filing instruction	r.)	
A. Filer's Non-Investment l	Income				
NONE (No reportable	e non-investment income.)				
DATE		SOURCE AND	ТҮРЕ		INCOME nrs., not spouse's)
1. 201)	STATE OF COLOR	ADO			00.02
2. 2010	STATE OF COLOR	ADO	<u>:</u>		\$128,598.00
3. 2009	STATE OF COLOR	IADO			\$125,216.00
4.					
DATE	e non-investment income.)	SOURCE AND	TYPE		
1. 2011	SELF-EMPLOYED	TRAVEL AGENT			
2. 2010	SELF-EMPLOYED	TRAVEL AGENT			
3.					
4.					
IV. REIMBURSEMEN (Includes those to spouse und dependent NONE (No reportable	children: see pp. 25-17 of filing instra				
SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAI	D OR PROVIDED
1. EXEMPT					
2.		-			
3,					
4					
_					

FINANCIAL DISCLOSURE REPORT Page 3 of 14	Name of Ferson Reporting Jackson, Richard B.	Date of Report 01/05/2011
V. GIFTS. (Includes those to spouse and dependent children; see p.	p. 78-31 of filling instructions.)	
NONE (No reportable gifts.)		
SOURCE	DESCRIPTION	VALUE
1. EXEMPT		
2.		
3.		
4.		
5.		
VI. LIABILITIES. (Includes those of spouse and dependent	children; see pp. 32-33 of filling instructions.)	
NONE (No reportable liabilities.)		
CREDITOR	DESCRIPTION	ALUE CODE
I.		
2.		
3,		
4.		
5.		

E7	NANCIAL DISCLOSURE RI	FDAE	от [Name of Perso	n Reporting					Date of Report
	ge 4 of 14	ei Or	1	Jackson, Ric	chord B.				-	01/05/2011
VI)	I. INVESTMENTS and TRUS NONE (No reportable income, ass				(Includes tha	se of spouse and d	ependent ch	îldren; see	грр. 34-66	of filling instructions.)
	A. Description of Assets (including trast assets)		B. ome during rting period	Gross va)	C. ue at end of ng period		Transacti	D. ions during		period
	Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code I (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (3-P)	(4) Gain Code I (A-X)	(5) Identity of buyer/seller (if private transaction)
ì.	IRA#I			T		Exempt				
2.	-VANGUARD VALUE VIPERS	В	Dividend	I L	T			<u> </u>		
3.	-VANGUARD FTSE ALL WORLD EX US INDEX	٨	Dividend	K	T					
4.	-VANGUARD EXTENDED MKT VIPERS	A	Dividend	l L	т					
5.	-VANGUARD GROWTH VIPERS	۸	Dividend	l L	Т					
6.	-BNY MELLON MUNICIPAL OPPOR TUNITIES FUND	۸	Dividend	J J	τ					
7.	B-NY MELLON NATIONAL INTERMEDI ATE MUNICIPAL BOND FUND	В	Dividend	I K	Т					
8.	-US TREASURY NOTE 1/2011	۸	Dividend	К	Т					
9.	-US TREASURY NOTE DYD 10/2012	^	Dividend	I K	τ					
10.	-US TREASURY NOTE 07/13	Α	Dividend	ιĸ	Т					
11.	BROKERAGE ACCOUNT #1									
12	FED HOME LN MTG CORP	В	Dividend	L	Т					
13,	FED HOME LOAN BANKS	В	Dividend	I,	τ					
14,	US TREASURY NT 11/12	В	Interest	L	Т					
15.	US TREAS INFLATION IND BOND	۸	Interest	l.	Ή					
16.	US TREASURY NOTE 6/2016	В	Interest	Ĺ	Т					
17.	US TREASURY NOTE 12/16	В	Interest	l.	Т					
				• • • • • • • • • • • • • • • • • • • •						
(S 2. V (S 3. V	Color Cafe Codes: A = \$1,000 or less ce Colornas Bi and D4) = \$150,001 = \$100,000 sine Codes	,000	B =\$1,001 - \$2, G =\$100,001 - \$ K =\$15,001 - \$ C =\$560,001 - \$ R =Cost (Real ! V =Other	\$1,000,000 \$0,000 \$1,000,000	L =350,00 Pi =\$1,00	00,001 - \$5,000,000 01 - \$100,000 0,001 - \$5,000,000 1han \$50,000,000 mant	H2 ~Mc	101 - \$15,000 ore than \$5,0 0,001 - \$250 000,001 - \$2 o Market	60,600 000,0	E =585,001 - 580,000

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 5 of 14	Jackson, Richard B.	01/05/2011
		l

VII. INVESTMENTS and TRUSTS - income, value, promocrious (Includes those of sponse and dependent children; see pp. 34-40 of filling instructions.) NONE (No reportable income, assets, or transactions.)

Λ.	B.	C.	
Description of Assets	Income during	Gross value at end of	
(including trust assets)	reporting period	reporting period	

	A. Description of Assets (including trust assets)	Incom				Gross velu	e at end of g period		Transacti	D. ions during	reporting p	eriod
		(I) Amqunt Code I (A-H)	(2) Type (c.g., div., rent, or int)	(1) Value Code 2 (1-P)	(2) Value Method Code 3 (O-W)	(I) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Onin Code I (A-H)	(5) Identity of buyer/seller (if private transaction)		
18.	US TREASURY NOTE 7/17	A	Interest	L	Т			T -	Π			
19.	US TREASURY NOTE 5/10	Λ	Interest									
20.	GEN ELECT CAP CPR 9/17	٨	Interest	к	т							
21.	WELLS FARGO CO 5.25% 10/12	В	Interest	К	Т							
22.	AETNA INC	В	Interest	К	Т					w ******		
23.	PFIZER INC	В	Interest	К	Т							
24.	GOLDMAN SACHS GROUP INC	В	Interest	К	т		 					
25.	AT & T INC	В	Interest	К	Т							
26.	ISHARES S&P GSCI COMMODITY IND EXED TRUST	A	Interest	К	Т							
27.	AIM STIT TREASURY PORTFOLIO	A	Interest	L	Т							
28.	SPDR TRUST SERIES 1	D	Dividend	м	T							
29.	ISHARES TR MIDCAP	В	Dividend	L	Т							
30.	SPDR DOW JONES INDUSTRIAL AVER AGE	D	Dividend	м	Т							
31.	ISHARES MSCI EAFE INDX FUND	D	Dividend	М	т							
32.	RYDEX MANAGED FUTURES STRAT EGY FD		None	K	т							
33.	ISHARES RUSSELL 1000 INDEX FUND	С	Dividend	м	T							
34.	ISHARES TR S & P SMALL CAP 600	A	Dividend	L	Т							

f. Income Gain Codes:	A =51,000 or less	B =51,001 - \$2,500	C =52,50t - \$5,000	D=55,001 - \$15,000	2 \$15,001 - \$10,000
(See Columns B1 and D4)	F-\$50,004 - \$400,000	G =\$100,001 - \$1,000,000	H1 - \$1,000,001 - \$5,000,000	H3 -More than \$5,000,000	
2. Value Codes	J=\$15,000 or less	X =\$15,001 - \$50,000	L =\$50,001 - \$180,000	M =\$100,003 - \$250,009	
(See Columns C1 and D3)	N -\$259,001 - \$500,000	000,000,12 · 100,000,000	P1 ~\$1,060,021 - \$5,000,000	P2 ~55,000,001 - \$25,000,000	
	P3 =\$25,000,001 - \$50,000,000		P4 =More than \$50,000,000		
3. Value Method Codes	Q "Approiss!	R =Cost (Real Estate Cally)	S = Assessment	T = Cash Market	
(See Column C2)	U ~ Book Value	V =Otter	W *Estimated		

FI	NANCIAL DISCLOSURE R	EPOF	et [Name of Perso	n Reporting				T	Date of Report
Pag	ge 6 of 14			Jackson, Ri	chord B,					01/05/2011
vii	. INVESTMENTS and TRUS				(includes that	se of spouse प्रसर्व d	ependent chi	ildren; sce	pp. 34-68	of filing instructions.)
	A. Description of Assets (including toust assets)		8. ome during rating period		C. fue at end of ng period		Transacti	D. ons during	reporting	period
	Piece "(X)" after each asset exempt from prior disclosure	(I) Amount Code I (A-H)	(2) Type (e.g. div., sent, or int.)		(2) Value Method Code 3 (Q-W)	(1) Type (c.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code ((A-H)	(5) Identity of buyer/seller (if private tracsection)
35.	VANGUARD EMERGING MARKETS E TF	A	Dividen	d L	Т		<u> </u>			
36.	FED HOME LN MTG CORP	В	Dividen	4						
37.	FED HOME LOAN BANK	С	Dividen	а м	Т					
38.	FED NAT MTG ASSN	В	Dividen	đ						
39.	401(k)#1									
40.	-PIMCO TOTAL RETURN FUND	В	Dividen	d K	т					
41.	-DODGES & COX BALANCED FUND	В	Dividen	d K	Т					
42.	-DODGE & COX STOCK FUND	В	Dividen	d 3	т					
43.	-FIDELITY CONTRAFUND	В	Dividen	d J	Т					
44.	-RAINIER LG CAP GROWTH EQUITY	В	Dividen	d J	Т					
45.	-AMERICAN FUNDS EUROPACIFIC GR	В	Dividen	d J	т					
46.	BROKERAGE ACCOUNT #2									
47,	CHEVRON CORP	В	Dividen	d K	Т					
48.	EXXON MOBIL	С	Dividen	d L	T					
49.	AIR PROTS AND CHEMICALS INC	^	Dividen	d K	7					
50.	EMERSON ELECTRIC CO	^	Dividen	d K	Т					
SI.	GENERAL ELECTRIC CO	A	Dividen	d K	Т					
								_		
(S 2. Vi (S 3. Vi	Come Orin Code: A =51,000 or less F Column D1 eau D4) F 7-530,001 - \$100,000 Inc Coden F 7-530,000 r 1-830,000 F 1-825,000,001),02m	B =\$1,001 - \$2 G =\$100,001 - K =\$15,001 -1 O =\$500,001 - R =Cost (Real)	\$1,000,000 \$50,000 \$1,000,000	L =\$30,00 P1 =\$3,00	00,001 - \$5,000,000 01 - \$100,000 10,001 - \$5,000,000 10,00 \$50,000,000 ument	H2 =Mc M =\$10	01 - 515,000 ore shan \$5,0 0.001 - \$2,50 000,001 - \$2 o Market	000,000 3,000	E ~\$15,00(- \$30,000

FU	FINANCIAL DISCLOSURE REPORT			Name of Person Reporting						Date of Report	
Pa	ge 7 of 14			Jackson, Ri	chard B.					01/05/2011	
VII	I. INVESTMENTS and TRUS NONE (No reportable income, ass				(Includes sko	se of spokse and d	ependent ch	ildren; see	рр. 34-6і	9 of filing instructions.)	
	A. Description of Assets (including trust assets)		B. me during ting period	Grass val	C. ne at end of ng period		Transaci	D. ons during		period	
	Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code) (A-H)	(2) Type (e.g div., ren or int.)	. Code 2	(2) Value Method Code 3 (Q-W)	(!) Type (e.g., buy, sell, redemption)	(2) Date Morsh - Day	(3) Value Code 2 (J-P)	(4) Gain Code I (A-H)	(5) Identity of buyer/seller (if private transaction)	
52.	UNION PAC CORP	Α	Divider	id K	7	·				T	
53.	UNITED TECHNOLOGIES CORP	A	Divider	ıd K	т						
54.	WALT DISNEY CO	۸	Divider	id J	Т				-		
55.	JOHNSON CTLS INC	۸	Divider	rd J	т						
56.	STARBUCKS CORP	В	Divider	ıd M	т						
57.	NESTLE S A SPONSORED ADR REPSTG REG	۸	Divider	nd K.	т						
58.	PEPSICO INC	A	Divider	d K	Т						
59.	PROCTER & GAMBLE CO	В	Divider	d K	т						
60.	ABBOTT L ABORATORIES	Α	Dividen	nd J	T						
61.	NOSNHOL & NOSNHOL	В	Dividen	ıd K	Т						
62,	PFIZER INC	Α	Dividen	d J	T						
63,	THERMO FISCHER SCIENTIFIC		None								
64.	TEVA PHARMACEUTICAL INDS LTS	٨	Dividen	d							
65.	INVESCO LTD	Α	Dividen	d J	Т						
65.	ACELTD	٨	Dividen	d K	Т						

A =\$1,000 or igas	B =51,001 - 12,100	C =\$2,501 + \$3,000	D ~\$5,001 - \$15,000	E -\$15,001 - \$50,000
F =\$59,001 - \$100,000	G~\$100,061 - \$1,000,000	\$11 ~\$1,000,001 - \$\$,000,000	H2 ~More then \$5,000,000	
J =515,000 or less	K -\$15,001 - \$50,000	L =\$50,001 - \$100,000	M -\$190,001 - \$250,000	
N =\$250,001 - \$560,000	000,000,t2 - 100,0022** ()	P1 = E1,000,001 - E5,000,000	P2 =\$5,000,001 - \$25,000,000	
P3 -\$25,000,001 - \$50,000,000		M = More than \$50,000,000		
Q =Approisal	R =Cost (Real Estate Only)	S = Assessment	T = Cosh Market	
U ×Book Value	V ⊷Other	WRENIMATER		
	F =\$50,001 - \$100,000 J =\$15,000 or less N =\$250,001 - \$500,000 P3 =\$25,000,001 - \$50,000,000 Q =Approint	F =\$50,001 - \$100,000	F =58.00.1 -\$100,000 G -\$100,000 H1 -\$1,000,000 H1 -\$1,000,000 -\$8,000,000 J =15.00 to lear K =515.00 -\$50,000 U =55.00.00 L =55.00.00 1,000,000 H = 7500,000 -\$50,000,000 U = 7,000,000 -\$1,000,000 U = 1,000,000 U = 1,000,0	F =58.00.1 ±100,000 G =5100,001 =1,000,000 H1 =1,000,000 15,000,000 H2 = there uses \$5,000,000 C H3 = 1,000,000 15,000,000 H2 = there uses \$5,000,000 C H3 = 1,000,000 15,000,000 H2 = 1,000,000 C H3

ı

Т

Dividend

Dividend

A

A

67. JP MORGAN CHASE & CO

68. MORGAN STANLEY

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 8 of 14	Jackson, Richard B.	0(/05/2011

VII. INVESTMENTS and TRUSTS - income, value, trans-NONE (No reportable income, assets, or transactions.)

	A. Description of Assets (including trust assets)		B. me during ting period	Orosa valu	:. s: at end of g period	D. Transactions during reporting period				D oiro
	(including duck sacets) Place "(X)" after each asset exempt from prior disc bours		(2) Type (c.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(i) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code I (A-H)	(5) Identity of buyer/seller (if private transaction)
59.	STATE STREET CORP	Λ	Dividend	1	т					
70.	US BANCORP	٨	Dividend	j	T					
71.	WELLS FARGO AND CO	^	Dividend	J	τ					
72.	ACCENTURE PLC	٨	Dividend	J	т					
73.	APPLE INC	Α	None	к	τ					
74.	CISCO SYSTEMS INC	۸	None	J	т					
75.	GOOGLE INC	٨	None	J	Т					
76.	HEWLETT PACKARD CO	Α	Djyjdend	3	Т					
77.	INTEL CORP	٨	Dividend	J	Т					
78.	MASTERCARD INC	Λ	Dividend							
79.	MICROSOFT CORP	.A	Dividend	j	Т					4.00
80.	SALESFORCE.COM INC		None	,	T					
81.	SEMPRA ENERGY	۸	Dividend	,	Т					
82.	WATSON PHARMACEUTICALS INC	٨	Dividend	7	'n					
B3.	ZIMMER HOLDINGS INC	٨	Dividend	J	Ŧ					
84.	ISHARES MSCI EAFE INDEX FD	С	Dividend	М	Ŧ					
85.	ISHARES MSCI EMERGING MARKETS FD	Λ	Dividend	к	T					

- [1. Income Gein Codes:	A =\$1,000 or less	D =\$1,901 - \$2,500	C -52,301 - \$5,000	D-\$5,001 -\$15,000	E=\$15,001 - \$50,000
- }	(Sec Columns BJ and D4)	F-\$50,001 - \$100,000	G~\$100,001 - \$1,000,000	111 =\$1,000,001 + \$5,000,000	112 - More than \$5,000,000	
١	2. Value Codes	J=\$15,000 or less	X =\$15,001 - \$50,000	1 -450,001 - \$100,000	H =\$100,001 - \$250,000	
- 1	(See Columns Cl and D3)	N =\$258,001 - \$300,000	O -1500,001 - \$1,000,000	71 -\$1,000,001 - \$5,000,000	1'2 -\$5,600,001 - \$25,000,000	
		P3 =\$25,000,001 - \$50,000,000		P4 "More than \$50,000,000		
- 1	3. Value Method Codes	Q - Appraisal	R -Cost (Real Estate Only)	S = Assessment	T *Cash Market	
ij	(See Columb C2)	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 9 of 14	Jackson, Richard B.	01/05/2011

VII. INVESTMENTS and TRUSTS - income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.) NONE (Na reportable income, assets, or transactions.)

	A. Description of Assets (including trust assess)	repor	B, me during sing period	Gross vali reportir	one at end of ag period	D. Transactions during reporting period				
	Place "(X)" after each asset except from prior disclosure	(i) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	(2) Value Method Code J (Q-W)	(1) Type (e.g., buy, sell, redempilon)	(2) Data Morah - Day	(3) Value Code 2 (J-P)	(4) Gain Code ! (A-H)	(S) Identity of buyer/seller (if private transaction)
E6.	VANGUARD EXTENDED MARKET VI PERS INDEX FUND	Α	Dividend	L	т					
87.	DENVER CO CITY & CTY SCHOOL BS TRICT	В	Interest	L	т					
88.	CASTLE PINES NORTH MET DIST CO	С	Interest	L	Т					
89.	THORNTON CO DTD	В	Interest	L.	т					
90.	RANGELY CO SCH DIST RE 4	В	Interest	L	т					
91.	SNOWMASS VIG CO	В	Interest	L	Ŧ					<u> </u>
92.	FLORIDA HSG FIN CORP REV	В	interest	К	Т					······································
93.	UNIV COLOR ENTERPRISE SYS REV	В	Interest	l.	Т					
94.	METROPOLITAN TRANSN AUTH NY	В	Interest	L	Т					
95.	METRO WASTEWTR RECLAM DSTR CO	В	Interest	L	Т	_				
96.	EL PASO CTY CO REV	В	Interest	L	T					
97.	BNY MELLON MUNICIPAL OPPORT UNITIES	В	Dividend	к	T					
98.	BNY MELLON NATL MUNI MONEY MKT FUND	A	Dividend	М	т					
99.	HILLSBOROUGH CTY FL BOND	С	Interest							
100,	CRACLE CORP	Α	Dividend							
101.	COMCAST CORP	۸	Dividend							
102.	HUDSON CITY BANCORP INC	A	Dividend				T :			

i. Income Gain Codex:	A ~51,000 or less	B ~\$1,001 - \$2,500	C -\$2,501 - \$5,000	D -\$5,002 - \$15,000	E =\$15,001 - 150,000
(See Culumns D) and D4)	F ~\$50,001 - \$100,000	C =\$160,607 - \$1,606,660	H: =51,000,001 - \$5,000,000	FIZ -More than \$5,000,000	
2. Value Cudes	3 =\$15,000 or less	K ~513,001 - \$50,000	L =\$50,001 - \$100,000	M ~\$100,001 - \$250,000	
, (See Columns Cl and D3)	N ⇒\$250,001 - \$500,000	CO-\$500,061 - \$1,000,000	P1 =51,000,001 - \$3,000,000	P2 =\$5,000,001 - \$25,000,000	
Ì	P3 ~\$25,000,001 - \$50,000,000		P4 = More than \$50,000,000		
3. Value Method Codes	Q=Appraint	R =Cost (Real Estate Only)	S =Assessment	T = Crash Mayket	
(See Column C2)	U -Book Value	V =Other	W =Estimated		

FINANCIAL	DISCLOSURE	REP	ORT
Page 10 of 14			

119. WELLS FARGO FDS TR SPECI TECHN

Name of Person Reporting	Date of Report
Jackson, Richard B.	01/05/2011

VII. INVESTMENTS and TRUSTS - income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

	A. Description of Assets (including trust assets)		B. Income during reporting period		C. Gross value at end of reporting period		O. Transactions during reporting period			
	Place "(X)" after each asser exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(I) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code I (I-P)	(4) Gain Code I (A-H)	(5) Identity of buyer/seller (if private transaction)
103.	EXELON CORP	Α	Dividend				T	Γ		
104.	IRA#2		Ţ							
105.	-DREYFUS PR LRG CAP EQ FD	Α	Dividend	L	1			†		
106.	-VANGUARD FTSE ALL WORLD EX US	۸	Dividend	К	т					
107.	-VANGUARD EXTEND MKT VIPERS IN DEX FD	Α	Dividend	į	Т					
108.	-BNY MELLON INTERM BOND FUND C LASS M	В	Dividend	К	т					
109.	-DREYFUS PREMIER LTD TERM HIGH YIELD FD	۸	Dividend	j	Т					
110.	-AIM STIT TREASURY PORTFOLIO	۸	Interest	J	т					
111.	BROKERAGE ACCOUNT #3									
112.	DREYFUS LARGE FUND GROWTH F UND CLASS I	Α	Dividend	ĸ	T					
113.	BROKERAGE ACCOUNT #4									
114,	AMERICAN STRATEGIC INCOME P ORTFOLIO	В	Dividend	К	т					
115.	CIT GROUP INC NEW		None	J	Т					
116.	GABELLI DIVIDEND & INCOME TRUST	٨	Dividend	3	Т					
27.	AIM INV INVESCO VAN KAMPEN COR P BOND FD.	Ð	Dividend	к	т					
118.	AIM INV INVESTCO VAN KAMPEN HI GH YD FD CLASS A	Α	Dividend	к	T					

I. Income Gain Codes:	A =\$1,000 or less	B-\$1,001 - \$2,500	C =\$2,501 - \$5,000	D =\$5,001 - \$15,000	E =\$15,001 - \$50,000
(See Columns B1 and D4)	F < £10,001 - \$100,000	G-\$100,001 - \$1,000,000	111 \$1,000,001 - \$5,000,000	H2 = More than \$5,000,000	
2. Value Codes	3 =\$15,000 or less	K =\$15,001 - \$10,000	L -550,001 - \$100,000	M =\$100,001 - \$230,000	
(See Columns C) and D3)	N -\$250.004 - \$500,000	090,000 - \$1,000,000	P) =51,000,001 - \$5,000,000	P2 -\$5,000,001 - \$25,000,000	
*	P3 ~\$25,000,001 - \$50,000,000		P4 = More than \$50,000,000		
3. Value Method Codes	O -Approfitat	R Coo (Real Estate Only)	S =Assessment	T = Cash Market	
(See Column C2)	U -Back Value	V =Other	W =Enimand		

FINANCIAL DISCLOSURE REPORT Page 11 of 14	Name of Person Reporting Jackson, Richard B.	Dute of Report 01/05/2011
VII. INVESTMENTS and TRUSTS - income, we	lue, tranzactions (Includes thase of spouse and dependent children; see pp. 34-c thems:]	0 of filing instructions.)

A. Description of Assets (including trust assets)		B, me during ting period	Gross valu	C. SE SE ONE OF SE PERÍOD	D. Transactions during reporting period				
Place "(X)" after each asset exemps from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div_rest, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, self, redemption)	(2) Date Monta - Day	(3) Value Code 2 (5-P)	(4) Gsin Code I (A-H)	(5) Identity of buyer/seller (if private transaction)
120. CIT GROUP INC NEW NOTE \$/13	٨	Dividend	,	T					
12). CIT GROUP INC NEW 5/14	A	Dividend	J	т					
122. CIT GROUP INC NEW 5/15	۸	Dividend	J	Т					
123. CIT GROUP INC NEW 5/16	^	Dividend	3	Т					
124. CIT GROUP INC NEW 5/17	٨	Dividend	3	T					
125. GENERAL ELEC CAPITAL CORP MID TERM NOTE	٨	Dividend	3	т					
126. WELLS FARGO BANK (VARIOUS A CCOUNTS)	۸	Interest	к	т	,				
127. TRUST#1									
128SPDR TRUST SERIES I	Α	Dividend	К	T					
129SPDR DOW JONES INDUSTRIAL AVER TRUST	A	Dividend	к	Т					
130ISHARES MSCI EAFE INDEX FD	A	Dividend	J	т					
131I-SHARES MSCI EMERGING MKTS FD	۸	Dividend	J	Т					
132VANGUARD EXTENDED MKT VIPERS INDX FD	Α	Dividend	к	Т	_				
i33BNV MELLON NATL INTER MUN BD FUND	۸	Dividend	L	r					
34BNY MELLON NATL MUNI MONEY MKT FD	٨	Dividend	J	Т					_
135US TREASURY BILL	A	Interest	j	Т					-
136DIAMONDS TR	Α	Dividend							

t. Intome Guis Fodes:	A =\$1,000 pr (rea	P =\$1,001 - \$2,500	C +12.501 - 15.000	D =\$5.001 - \$15.000	E -\$15,001 - \$50,000
1. Income Class Cores:	V \$1 hope on little	1) -33,001 - 32,300	r\$2,301 - \$3,000	D -42/m) - 212/200	E -\$13/001 - \$30/000
(See Columns B) and D4)	F-\$50,001 - \$100,000	000,000 12 100,0012- D	000,000,11 - 100,000,12-111	192 "More shee \$5,000,000	
2. Value Codes	3 =\$15,000 or tess	K =\$15,001 - \$50,000	L =550,001 - \$100,000	14 = 1100,001 - \$250,000	
(See Columns C1 and D3)	N =\$230,001 - \$500,000	O =\$509,001 - \$1,000,000	Pi =\$1,090,001 -\$5,000,000	P2 *\$3,000,001 - \$25,000,000	
	P3 =\$25,000,001 - \$50,000,000		F4 =More than \$50,000,000		
3. Value Method Codes	Q =Apprain1	R "Cost (Real Estate Only)	5 = Assessment	T -Cush Market	
(See Column C2)	U =Back Value	V =Oxher	W ~Estimated		

FINANCIAL DISCLOSURE REPORT Page 12 of 14			т Г	Nome of Person Reporting Jackson, Richard B.						Once of Report 01/05/2011	
 VII □	. INVESTMENTS and TRUS NONE (No reportable income, ass				(Includes that	se of spouse and d	lependent ci	hildren; see	рр. 34-60	of filing instructions.)	
	A. B. Description of Assets Income during (including must assets) reporting period					D. Transactions during reporting peri			eriod		
	Place "(X)" after each asset exempt from prior disclosure	(I) Amount Code I (A-H)	(2) Type (a.g. div., rens, arins.)	(i) Value	(2) Value Method Code 3 (Q-W)	(1) Typo (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Eode I (A-H)	(5) Identity of buyer/seller (if private transaction)	
137.	TRUST #2							T			
138.	-SPDR TRUST SERIES I	В	Dividenc	l L	Т		_	+-			
139.	-SPDR DOW JONES INDUSTRIAL AV	В	Dividen	L	ī						
140.	-ISHARES MSCI EAFE INDX FD	A	Dividend	ı K	т						
141.	-ISGARES MSCI EMERGING MKTS IN DX FD	Λ	Dividenc	I J	Т						
142,	-VANGUARD EXTENDED MTK VIPERS	A	Dividend	К	τ						
143.	-COLO ST BD GOVERNORS UNIV ENT	В	Interest	1.	Т			1			
144.	-BOULDER ONT CO SALES TAX	и	Interest	L	Т.						
145.	-BNY MELLON NTL INT MUN BD FD	С	Dividend	l L	Т			1			
146.	-US TREASURY NOTE 3/11	А	Interest	к	т						
147.	-US TREASURY NOTE 7/12	۸	Interest	к	т						
148.	-BNY MELLONNATL MUNI MONEY MKT FD	۸	Dividend	κ	т						
149.	-DIAMONDS TR	9	Dividend								

I. Income Gain Codes:	A =\$1,000 or loss	B =\$1,001 - \$2,590	C =52,501 - \$5,000	D=\$5,001 - \$15,000	E-\$15,001 - \$50,000
(See Columns B) and D4)	F =\$50,003 - \$100,000	200,000,12 - 100,0012= 23	000,000,22 - 100,000,12= 1H	H2 =More than \$5,000,000	
2. Value Codes	3 =\$15,000 or less	K =\$15,001 - \$50,000	1 -\$50,001 - \$100,000	M -\$100,001 - \$250,806	
(See Columns C1 and D3)	N =3250,001 = \$500,000	O-\$300,001 - \$1,000,000	PT ~SE,000,001 - \$5,000,000	P2=\$5,000,001 - \$25,000,000	
1	P3 ~\$25,000,004 - \$50,000,000		P4 =340re than \$50,000,000		
3. Value Method Codes	Q =Appraisa!	R = Cost (Real Estate Only)	S - Assessment	T "Cash Market	
(See Column C7)	U =Book Value	V =Other	W *Enimated		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 13 of 14	Jackson, Richard B.	01/05/2011

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Report)

FINANCIAL DISCLOSURE REPORT	Neme of Person Reporting	Date of Report
Page 14 of 14	Jackson, Nichard B.	01/05/2011

IX. CERTIFICATION.

I certify that all information gives above (Including information pertaining to my spoince and minor or dependent children, if any) is according to the best of any knowledge and helief, and that any information not reported was withheld because it nest applicable statutory provisions permitting non-discingure.

I further certify that earned income from antide employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (S U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, M.E. Washington, D.C. 20544

R. Brooke Jackson

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks 30 968		Notes payable to banks-secured					
U.S. Government securities—see schedule		341	044	Notes payable to banks-unsecured			
Listed securities—see schedule	4	077	285	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable —primary residence		143	187
Real estate owned—primary residence		900	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable	Real estate mortgages receivable Other		Other debts-itemize:				
Autos and other personal property		85	840				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		143	187
				Net Worth	5	291	950
Total Assets	5	435	137	Total liabilities and net worth	5	435	137
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor —child's home loan	ı	125	000	Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	МО		
Provision for Federal Income Tax				-			
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities U.S. Treasury Notes	\$ 287,968
U.S. Treasury Inflation Indexed Bond	53,076
Total U.S. Government Securities	\$ 341,044
Listed Securities	
Account #1	
VANGUARD VALUE VIPERS	\$ 68,116
VANGUARD FTSE ALLWORLD EX US	43,522
VANGUARD EXTENDED MARKET VIPERS	37,625
VANGUARD GROWTH VIPERS	73,031
BNY MELLON NATIONAL INTERMED MUN BOND	46,258
BNY MELLON MUNICIPAL OPPORTUN FUND	9,951
CRA BNY MELLON	12,506
ACCRUED INCOME	377
Account #2	
SPDR TRUST V SERIES I	256,536
SPDR DOW JONES INDUSTRIAL AVERAGE	254,493
ISHARES MSCI EAFE INDEX FD	173,632
ISHARES TR S&PMIDCAP400 INDEX	129,686
ISHARES RUSSELL 1000 INDEX FD	165,614
ISHARES TR S&PSMALLCAP 600	62,351
VANGUARD EMERGING MARKETS ETF	75,596
FEDERAL HM LN MTGE CORP	52,436
FEDERAL HOME LOAN BANK	102,625
FEDERAL NATL MTG ASSN	54,156
RYDEX MAN FUTURE STRATEGY	19,680
FEDERAL HOME LOAN BANKS AETNA INC	57,641
WELLS FARGO COMPANY	25,654
PFIZER INC	26,880
GOLDMAN SACHS GROUP INC	27,451 26,951
GENERAL ELEC CAP CORP	27,536
AT&T INC	28,576
ISHARES S&P GSCI COMMODITY	17,818
THE AIM STIT TREASURY PORTFOLIO	112,103
ACCRUED INCOME	7,570
Account #3	7,570
PIMCO TOTAL RETURN FUND	49,383
DODGE AND COX BALANCED FUND	38,466
DODGE AND COX STOCK FUND	11,967
FIDELITY CONTRAFUND	14,503
RAINIER LG CAP GROWTH EQUITY	11,777
AMERICAN FUNDS EUROPACIFIC GR	15,610
Account #4	•
CHEVRON CORP	44,048
EXXON MOBIL CORP	100,862
AIR PRODUCTS & CHEMICALS	25,866

EMERSON ELECTRIC	19,550
GENERAL ELECTRIC CO	9,498
UNION PAC CORP	20,275
UNITED TECHNOLOGIES CORP	22,581
THE WALT DISNEY COMPANY	9,675
JOHNSON CTLS INC	8,199
STARBUCKS CORP	134,640
NESTLE S A SPONSORED ADR REPSTG REG	42,416
PEPSICO INC	25,852
THE PROCTER & GAMBLE CO	47,940 8.139
ABBOTT LABORATORIES JOHNSON & JOHNSON	43,085
PFIZER INC	9.291
INVESCO LIMITED	10,327
ACE LTD	17,556
JP MORGAN CHASE & CO	13,090
MORGAN CHASE & CO	6.115
STATE STREET CORP	9,288
US BANCORP	8,680
WELLS FARGO & COMPANY	16,326
ACCENTURE PLC	17,328
APPLE INC	20,225
CISCO SYSTEMS INC	13,412
GOOGLE INC	11,114
HEWLETT PACKARD CO	10,902
INTEL CORP	16,926
SALESFORCE.COM INC	13,922
WATSON PHARMACEUTICALS	10,967
MICROSOFT CORPORATION	11,260
ZIMMER HOLDINGS INC	9,852
SEMPRA ENERGY	10,018
ISHARES MSCI EAFE INDEX FD	I 17,473
ISHARES MSCI EMERGING MARKETS INDEX	43,437
VANGUARD EXTENDED MARKET VIPERS	103,916
DENVER CO CITY & CNTY SCH DISTR	50,004
CASTLE PINES NORTH MET DIST COLO	79,564
THORNTON CO DTD	56,077
RANGELY CO SCH DIST RE 4	55,819
SNOWMASS VIG CO	55,973
FLORIDA HSG FIN CORP REV	35,068
UNIVERSITY COLO ENTERPRISE SYST REV	51,164
METROPOLITAN TRANSN AUTH NY METRO WASTEWTR RECLMATION DIS COLO	53,038
EL PASO CNTY COLOR REV	53,289
BNY MELLON MUNIPICAL OPPORTUNITIES FD	54,496 24,879
BNY MELLON NATL MUNI MONEY MKT FD M	176,149
ACCRUED INCOME	10,969
Account #5	10,505
DREYFUS PR LRGE CAP EQ	63,800
VANGUARD FTSE ALL WORLD EX US	21,423
VANGUARD EXTENDED MARKET VIPERS	18,845
BNY MELLON INTERMEDIATE BOND FUND CL M	46,756
DREYFUS PREMIER LTD TERM HIGH YIELD FUND	4,706
THE AIM STIT TREASURY PORTFOLIO	5,644
ACCRUED INCOME	123

Account #6	
DREYFUS LARGE CAP GROWTH FUND CLASS I	24,691
Account #7	
AMERICAN STRATEGIC PORTFOLIO INCOME INC	14,784
CIT GROUP INC NEW	4,814
GABELLI INCOME AND DIVIDEND TRUST	12,801
AIM INVESCO VAN KAMPEN CORP BOND FUND	24,403
AIM INVESCO VAN KAMPEN HIGH YIELD FUND CLASS A	20,691
CIT GROUP NEW SECURED NOTE SER A	1,420
CIT GROUP NEW SECURED NOTE SER A	2,106
CIT GROUP NEW SECURED NOTE SER A	2,096
CIT GROUP NEW SECURED NOTE SER A	3,486
CIT GROUP NEW SECURED NOTE SER A	4,843
GENERAL ELECTRIC CAPITAL MED. TERM NOTE	5,006
ACCRUED INTEREST	15,881
Total Listed Securities	\$ 4,077,285

STATEMENT OF SARA L. DARROW, TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLINOIS

Ms. DARROW. Thank you, Senator Franklin—Franken—I'm sorry. Not a good start.

Senator Franken. I am going to vote against you.

[Laughter.]

Ms. DARROW. I would like to very graciously thank you for chairing this hearing.

Senator Franken. OK, then I will.

[Laughter.]

Ms. DARROW. And, of course, I'd also like to thank President Obama for the honor of his nomination. And I would like to especially thank Senator Durbin for the privilege and the honor and the confidence that you show in me in nominating me for this position, and specifically for the opportunity to continue to serve my country in the capacity as a district court judge.

If I may introduce my family. Senator Franken. You bet.

Ms. Darrow. I have with me my husband, Clarence Darrow; and, our children, Connor, who is 14; Lilia, who is age 13; Augie, who is age 12; Anna Grace, who is 10; Ella, who is 8; and Danny, who is 5 years old.

Senator Franken. Wow. Hi. That is great.

Ms. DARROW. Thank you.

Senator Franken. Welcome, all of you.

Ms. DARROW. I'd also like to introduce my brother, Mike Frizzell who is here, and his wife, Katie Getsal (ph). They live here in DC, but I'm happy that they made the trip here to support me today. Senator Franken. Great. Welcome.

Ms. DARROW. And I'd also like to acknowledge some other family members who couldn't be here, but are watching the Webcast. My mother, Cheryl Frizzell, who is watching from Nebraska; my father and step-mother, Ron Frizzell and Susan Frizzell, who are watching from Michigan; and my in-laws, Clarence and Lily Darrow and the extended Darrow family, who are watching from Illinois.

And I'd also like to give a special thanks to my colleagues and friends at the U.S. attorney's office in both the central district of Illinois and also the law enforcement community there, and to all my friends who are watching the Webcast here today.

Thank you very much.

Senator FRANKEN. You are very welcome, and welcome to all your friends and family watching over the Web.

Ms. Darrow, let me start with you. As an assistant United States attorney, you specialize in prosecuting gang-related and organized crime. These can sometimes be difficult cases to build.

Can you talk about how the challenges you face prosecuting gang

and organized crime cases have prepared you for the bench?

Ms. Darrow. Thank you for the question, Senator. Certainly, when you're dealing with violent crime cases that entail enterprises such as street gangs and, also, drug trafficking organizations that can reach into international borders, they deal with several facts and complex legal issues and, also, logistical issues dealing with witnesses, some who are not always cooperative.

I think that my ability to not only handle high volumes of evidence and to organize it in a digestible manner, specifically for myself, the agents, and also, eventually, the jury or the judge, and, also, my ability to partner with law enforcement and make sure that we work together as a team to see that justice is served, I think that all of those traits are easily transferable to the bench and I would definitely employ those in presiding, if I am lucky enough to be confirmed as a District Judge.

Senator Franken. Thank you.

[The biographical information of Sara L. Darrow follows.]

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

Sara Lynn Darrow (formerly Sara Lynn Frizzell)

2. Position: State the position for which you have been nominated.

United States District Judge for the Central District of Illinois

 Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Attorney's Office for the Central District of Illinois 1830 2nd Avenue, Third Floor Rock Island, Illinois 61201

4. Birthplace: State year and place of birth.

1970; Pontiac, Michigan

 Education: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1994 - 1996, Saint Louis University School of Law; J.D., 1997

1997 (spring term), Campbell University School of Law; no degree

Summer 1996 & Summer 1995, Georgetown University Law Center; no degree

1988 to 1992, Marquette University; B.A., 1992

6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2003 – present
United States Attorney's Office for the Central District of Illinois
1830 2nd Avenue, Third Floor
Rock Island, Illinois 61201
Chief, Violent Crimes (2007 – present)
Assistant United States Attorney (2003 – present)
Special Assistant United States Attorney, Southern District of Iowa (2003 – present)

1999 – 2003 Henry County State's Attorney's Office 307 West Center Street Cambridge, Illinois 61238 First Assistant State's Attorney (2000 – 2003) Assistant State's Attorney (1999 – 2000)

1997 - 1998 Law Offices of Clarence Darrow 1515 Fourth Avenue, Suite 200 Rock Island, Illinois 61201 Associate/Intern

1995 – 1996 Law Offices of Timothy Hill 701 Market Street St. Louis, Missouri 63101 Law Clerk

Summer 1995 Office of U.S. Senator Edward M. Kennedy 317 Russell Senate Office Building Washington, D.C. 20510 Legal Intern

Summer 1995 The Irish Times 14 "F" Street NW Washington, D.C. 20001 Waitress

Summer 1995, 1994 The Dubliner 520 North Capitol Street, NW Washington, D.C. 20001 Waitress 1993 – 1994 S.O.M.E. (So Others Might Eat) 71 "O" Street, NW Washington, D.C. 20001 Year-long Volunteer/Community Organizer

1992 – 1993 Pasta Tree 1503 N. Farwell Avenue Milwaukee, Wisconsin 53202

1991 – 1993 Celebrity Club 2203 N. Prospect Milwaukee, Wisconsin 53202 Waitress

Other Affiliations

2009 - present Rock Island Community Foundation P.O. Box 3331 Rock Island, Illinois 61204 Board Member, unpaid

2007 – present Snowstar Ski Resort 9500 126th Street Andalusia, Illinois 61232 Ski Instructor, paid

2000 - 2004 Alternatives for the Older Adult 1803 7th Street Moline, Illinois 61265 Board Member, unpaid

Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

I have not served in the military. I did not register for selective service because I was not required to do so.

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Community Caring Conference Quad Cities Community Hero Law Enforcement Award (2006)

Illinois M.E.G. Directors and Task Force Commanders Association Narcotics and Dangerous Drugs Enforcement Outstanding Prosecution Award (2004)

9. <u>Bar Associations</u>: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Associations

American Bar Association Henry County Bar Association Illinois State Bar Association Rock Island County Bar Association

Committee

14th Judicial Circuit Advisory Screening Committee (2002 - present)

10. Bar and Court Admission:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Illinois, 1998

There has been no lapse in membership

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2007 United States Court of Appeals for the Seventh Circuit, 2004 United States District Court for the Central District of Illinois, 2000 United States District Court for the Southern District of Iowa, 2003

There has been no lapse in membership.

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Alternatives for the Older Adult
Board Member (2000 – 2004)
Cornbelt Running Club (2008 – present)
Christian Foundation for Children and Aging (2007 – present)
Girl Scouts of America
Troop Leader and Member (2003 – 2005)

Illinois Family Violence Coordination Council (early 2000s)

Rock Island Community Foundation

Board Member (2009 – Present)

Rock Island County Bar Auxiliary (former Secretary) (1999 – present)
St. Pius X Catholic Church Father Bader Scholarship Committee (2008 – present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Girl Scouts of America is an organization dedicated to creating opportunities for girls. The Rock Island County Bar Auxiliary is a historically women-only organization for spouses of members of the Rock Island County Bar Association and it has only women members today; however, my understanding is that the organization would welcome the spouse of any bar member who sought to join, regardless of sex. None of the listed organizations presently engages in invidious discrimination of any kind and I have no knowledge of any former discrimination by these organizations.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Project Safe Neighborhoods Training, UNITED STATES ATTORNEYS' BULLETIN (Mar. 2010). Copy supplied.

Although I have conducted a diligent search, there may be other published material that I have been unable to remember or identify.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None that I recall or have been able to identify.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Apr. 21, 2008: I spoke before the Rock Island City Council about a proposed special assessment for resurfacing of streets near my neighborhood. Copy of meeting minutes supplied.

Although I have conducted a diligent search, there may be other testimony, official statements, or communications relating to matters of public policy or legal interpretation that I have been unable to remember or identify.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Over the last several years, I have spoken on a variety of topics including criminal law and Department of Justice initiatives. I also participate in a range of non-public law enforcement meetings on behalf of the U.S. Attorney's Office, particularly in my capacity as designated coordinator of several Department of Justice programs, in which I am sometimes called upon to make comments about major initiatives in our office or cases we are handling.

I have listed below all of the speaking engagements I could identify through a search of my calendar and Internet databases. I have supplied all related material that I could obtain.

Nov. 11, 2009: Guest Lecturer at Western Illinois University, Organized Crime Law Enforcement Course. I spoke on organized crime and racketeering. PowerPoint presentation supplied.

May 9, 2008: Panelist, roundtable program at the Illinois State Police Academy for senior law enforcement officers. I spoke on identifying regional priority targets, street-gangs, juvenile issues and violent crime problems. I have no notes, transcript, or recording. The address of the Academy is 3700 East Lake Shore Drive, Springfield, JL 62707.

Oct. 13, 2008: Continuing Legal Education presenter, Scott County Bar Association. I gave a presentation entitled, "Updates in the Federal Sentencing Guidelines." I have no notes, transcript, or recording. The address of the Association is c/o H.J. Dane, 1111 E. River Dr., Davenport, IA 52803.

2007: Presenter to a meeting of Rock Island County law enforcement officers and prosecutors. I have no notes, transcript, or recording. The event took place at the Rock Island County Courthouse.

2005: Speaker at a Proclamation Ceremony for National Crime Victims Rights Week. I have no notes, transcript, or recording. The event took place at Rock Island County Courthouse.

2004: Presenter, meeting of Mercer County law enforcement officers and prosecutors. I spoke about Fourth Amendment issues. I have no notes, transcript, or recording. The event was held at the Mercer County Courthouse, 100 SE 3rd Street, Aledo, IL 61231.

2003: Speaker. I gave remarks on youth gun violence in the community. I have no notes, transcript, or recording. The event was held at the Martin Luther King Center, 630 9th Street, Rock Island, IL 61201.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have searched my files and publicly-available Internet databases to identify all of the interviews I have given, and I have supplied the most complete listing available based on my searches and my recollection, but there may be others I have been unable to identify. I have supplied clips of all newspaper articles.

Dawn Neuses, Happy Father's Day, Times 6, QUAD-CITY TIMES, Jun. 16, 2006.

Staff, Geneseo Mail Thefi Led to Bank Fraud Charges, STAR COURIER, Feb. 6, 2006.

Dawn Neuses, Working Mom Sees Pros, Cons of Outside Job, DISPATCH & ROCK ISLAND ARGUS, Mar. 26, 2004.

Matt Gergeni, Home-Schooling Parents Curious About Compliance Checks, DISPATCH & ROCK ISLAND ARGUS, Nov. 25, 2002.

Matt Gergeni, Truck-Length Question Keeps Driver Behind Bars, DISPATCH & ROCK ISLAND ARGUS, Mar. 26, 2002.

Scott Reeder, Court Overturns Death Sentence, DISPATCH & ROCK ISLAND ARGUS, Feb. 23, 2002.

Matt Gergeni, Newborn Twins Taken from Mom, DISPATCH & ROCK ISLAND ARGUS, Feb. 15, 2002.

Barb Ickes, Twins Born with Meth in Systems, QUAD-CITY TIMES, Feb. 15, 2002.

Lisa Hammer, Probable Cause Found Against Drug Defendants, STAR COURIER, Nov. 7, 2001.

Cesar G. Soriano, Cheap Beer, Canned Food and Charity for SOME, WASHINGTON TIMES, Apr. 13, 1994, at C14.

I recall giving television interviews on two occasions for which I have no recordings, transcripts, or other material:

Sept. 28, 2009: local media. I spoke about the demolition of a house forfeited due to drug trafficking.

2001: local media. I spoke about the launch of a campaign to collect used cellular telephones for re-purposing as emergency phones for domestic violence victims.

13. <u>Judicial Office</u>: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

000		1 .		
Of these	approximately	/ what	nercent v	vere.

jury trials: bench trials:	%		
civil proceedings:	%		

- Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
- 14. <u>Recusal:</u> If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to

an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.
 - I have not held public office. I have not had any unsuccessful candidacies for public office or unsuccessful nominations for appointed office.
- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I assisted in my husband's campaigns for Circuit Judge (2010), Illinois State Representative (2004 primary), and South Rock Island Township Trustee (2001, 2005, 2009). Specifically, I have worked to promote his candidacies in the community by going door to door, passing out campaign literature, putting up yard signs, and working campaign functions. In the course of this work, I have also supported other Democratic candidates who appeared on the same literature as my husband. In addition, I have collected signatures for nominations of candidates. The specific campaigns for which I recall undertaking such limited work are: Dick Durbin for U.S. Senate, Phil Hare for U.S. Representative, Thomas Kilbride for Illinois Supreme Court, Jeff Boyd for Rock Island County Sheriff, Patrick Verschoore for Illinois State Representative 72nd District, and

various candidates who constituted the Democratic Slate for South Rock Island Township in 2001, 2005, and 2009. There may be others I do not recall.

16. Legal Career: Answer each part separately.

- Describe chronologically your law practice and legal experience after graduation from law school including;
 - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I was never a sole practitioner.

 the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1997 – 1998 Law Offices of Clarence Darrow 1515 Fourth Avenue, Suite 200 Rock Island, Illinois 61201 Associate/Intern

1999 – 2003 Henry County State's Attorney's Office 307 West Center Street Cambridge, Illinois 61238 First Assistant State's Attorney (2000 – 2003) Assistant State's Attorney (1999 – 2000)

2003 – present
United States Attorney's Office for the Central District of Illinois
1830 2nd Avenue, Third Floor
Rock Island, Illinois 61201
Chief, Violent Crimes (2007 – present)
Assistant United States Attorney (2003 – present)
Special Assistant United States Attorney, S.D. Iowa (2003 – present)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity. I have not served as a mediator or an arbitrator.

b. Describe:

 the general character of your law practice and indicate by date when its character has changed over the years.

In 1999, I began serving as an Assistant State's Attorney handling juvenile, misdemeanor, and felony traffic cases. In 2000, I was promoted to First Assistant and handled felony cases and serious juvenile abuse cases. I prosecuted a wide variety of state crimes including: gun, burglary, child exploitation, rape, battery, drug, arson and other offenses. I tried approximately 20 cases to verdict before a jury and more than 100 cases to verdict before a jury and more than 100 cases to verdict before a jury and serious prosecuting cases, I was responsible for supervising staff attorneys, assigning caseloads, and scheduling jury trials for the courts. I also represented the county in civil matters including bankruptcy, tax sales and small claims.

In 2003, I began serving as an Assistant United States Attorney for the Central District of Illinois. I have investigated and prosecuted a wide variety of federal crimes, including drug conspiracy, gun, racketeering, child exploitation, fraud, bank robbery, and other crimes. In addition to conducting trials, I am responsible for all aspects of pre-trial litigation including presentation to the grand jury, preliminary hearings, detention hearings, suppression hearings, and sentencings.

 your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Currently, I represent the Unites States of America. As an Assistant State's Attorney, I represented Henry County and the State of Illinois. I have also served as guardian ad litem in adoption and personal injury cases involving minors.

As a state prosecutor, I developed a specialty in child exploitation crimes, handling child pornography, sex crimes against children, and serious abuse cases. During the time I served Henry County there was an unfortunate series of child homicides due to abuse. I sought termination of the offenders' rights to their remaining children and habitual offender petitions.

As a federal prosecutor I have specialized in prosecuting violent crimes, especially those committed by street gangs. I also have the opportunity to prosecute a wide variety of cases including civilian crimes committed on the Rock Island Arsenal, fraud, money laundering, and white collar crime.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

At the United States Attorney's Office, my appearances are 100% in federal court, occur frequently, and are in all stages of cases, including monthly presentation to the grand jury, initial prosecution, appeal, and post-conviction litigation. I have prosecuted approximately 300 defendants, tried ten cases to verdict before a jury, as well as authored and argued appeals. In addition to criminal matters, I am asked to provide legal advice on civil forfeiture matters.

At the Henry County State's Attorney's Office, my appearances were 95% in state court, 2% in federal court, and 3% in arbitration. I appeared in court daily on criminal cases at all stages including filing charges, initial appearances, detention hearings, preliminary hearings, pre-trial hearings, sentencing hearings and trials. I also appeared in bankruptcy court and in arbitration on behalf of the county.

i. Indicate the percentage of your practice in:

1. federal courts: 70°

2. state courts of record: 30%

3. other courts:

4. administrative agencies:

ii. Indicate the percentage of your practice in:

civil proceedings: 5%
 criminal proceedings: 95%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In state court I tried approximately 20 cases to verdict before a jury and over 100 cases to verdict before a judge. I was sole counsel in all cases.

In federal court I tried ten cases to verdict before a jury. I was sole counsel in one trial, lead counsel in six trials, and co-counsel in three trials.

i. What percentage of these trials were:

1. jury: 25% 2. non-jury: 75%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any bricfs, amicus or otherwise, and, if applicable, any

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

At the United States Attorney's Office, my appearances are 100% in federal court, occur frequently, and are in all stages of cases, including monthly presentation to the grand jury, initial prosecution, appeal, and post-conviction litigation. I have prosecuted approximately 300 defendants, tried ten cases to verdict before a jury, as well as authored and argued appeals. In addition to criminal matters, I am asked to provide legal advice on civil forfeiture matters.

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i. Indicate the percentage of your practice in:

1. federal courts: 70%

2. state courts of record: 30%

3. other courts:

4. administrative agencies:

ii. Indicate the percentage of your practice in:

civil proceedings: 5%
 criminal proceedings: 95%

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In federal court I tried ten cases to verdict before a jury. I was sole counsel in one trial, lead counsel in six trials, and co-counsel in three trials.

- i. What percentage of these trials were:
 - l. jury: 25%
 - 2. non-jury: 75%
- Describe your practice, if any, before the Supreme Court of the United States.
 Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any

oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

- 17. <u>Lifigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - a. the date of representation;
 - the name of the court and the name of the judge or judges before whom the case was litigated; and
 - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
 - 1. United States v. DeSilva, Jr., 04 CR 40080, Central District of Illinois, U.S. District Judge Joe Billy McDade, aff'd 505 F.3d 711 (7th Cir. 2007).

Organized Crime Drug Enforcement Task Force Operation Kingpin - For over a decade, the Latin Kings used violence and intimidation to control the drug trade in the Quad Cities. The lead defendant, Johnny Joe DeSilva, Jr., was the highest-ranking Latin King (the Regional Enforcer) in an area that included the Central District of Illinois and the Southern District of Iowa. His father, and co-defendant, John Joe DeSilva, Sr., lived in Texas and served as a source of drugs to his son's operation. DeSilva, Sr. coordinated shipments of cocaine and marijuana across the Mexican border to Illinois. DeSilva, Jr. and the Latin Kings engaged in violent gang-related activity to include: attempted murder, arson and aggravated battery. The investigation and trial presented many challenges: the DeSilvas threatened to kill and kidnap a federal agent, a lead witness was murdered, and a juror was the victim of gang-related violence. I handled all stages of the multi-year investigation and the prosecution. I supervised foreign-language courtauthorized wiretaps, litigated pre-trial motions, served as lead-counsel at DeSilva, Jr.'s two-week jury trial, argued sentencing hearings, and assisted in preparing the appeal. I interviewed over 60 witnesses in preparation for trial, many of whom were reluctant gang-members. I also organized and presented hundreds of trial exhibits and used automated litigation support to enhance the presentation of evidence at trial. DeSilva was sentenced to 40 years for convictions of racketeering, conspiracy to distribute drugs, use of a firearm in furtherance of racketeering, and threats to kidnap and injure.

Co-counsel at trial: David Risley

United States Attorney's Office

318 S. Sixth Street Springfield, IL 62701 (217) 492-4450

Opposing Counsel: James Clements for J.J. DeSilva, Jr.

1503 Brady Street Davenport, IA 52803 (563) 323-9715

David Triemer for J.J. DeSilva, Sr. 601 Brady Street - Suite 211 Davenport, IA 52803 (563) 323-7889

Jack Dusthimer for J. Garcia-Martinez 1503 Brady Street Davenport, IA 52803 (563) 323-8344

2. United States v. Landfried, 09 CR 40034, 09 CR 40085, 09 CR 40086, 08 CR 40008, 07 CR 40034, Central District of Illinois, U.S. District Judges Michael M. Mihm and Joe Billy McDade.

Organized Crime Drug Enforcement Task Force Operation Bluegrass – What began as a traffic stop in Illinois, wherein 200 pounds of marijuana was seized, quickly evolved into a multi-agency investigation targeting an international conspiracy involving the supply, distribution and transportation of thousands of pounds of marijuana. The defendants were leaders of this large-scale marijuana smuggling organization. Since at least 2002, the Landfried organization used private aircraft, numerous couriers and a series of safe houses along the I-80 corridor to smuggle large quantities of drugs from Mexico to Pennsylvania. I was sole counsel throughout the investigation and prosecution. To date, 19 defendants have been indicted and convicted, including the pilot for the organization.

Opposing Counsel: James Clements for N. Landfried

1503 Brady Street Davenport, IA 52803 (563) 323-9715

Kevin Kelly for R. Landfried 330 South Third Street, Suite 990 Las Vegas, NV 89101 (702) 385-7270 George Taseff for C. Mullan Peoria Assistant Federal Defender 401 Main Street, Suite 1500 Peoria, IL 61602 (309) 671-7891

Murray Bell for C. Walker 125 Kirkwood Boulevard Davenport, IA 52803 (563) 326-4095

Steve Hanna for D. Collins 418 16th Street Moline, IL 61265 (309) 797-9000

William Loeffel for R. Maruscak, Jr. 139 E Washington Street East Peoria, IL 61611 (309) 694-3196

John Lonergan for F. Berardelli 411 Hamilton Boulevard, Suite 1708 Peoria, IL 61602 (309) 673-3939

John Steckel for J. Welling 1600 4th Avenue, 400 Rock Island, IL 61201 (309) 786-2000

Andrew Larson for H. McKinnon 3610 25th Avenue, Suite 2 Moline, IL 61265 (309) 757-7500

Donovan Robertson for D. Harmon and J. Seibert 100 - 17th Street Rock Island, IL 61201 (309) 795-6217

Chris Dorbandt for A. Ruppel 603 West 12th Street Austin, TX 78701 (512) 407-9700 Aaron Dyer for C. McGurren The Law Centre 329 18th Street Rock Island, IL 61204 (309) 788-2800

Jack Dusthimer for D. Corrigan 1503 Brady Street Davenport, IA 52803 (563) 323-8344

Ron Hanna Jr. for D. Keitel 411 Hamilton Boulevard, Suite 1908 Peoria, IL 61602 (309) 740-9121

Steve Townsend for P. Preda 564 Forbes Avenue Pittsburgh, PA 15219 (412) 281-5336

Jeffrey Flanagan for R. Bedalota 411 Hamilton Boulevard Peoria, IL 61602 (309) 671-9701

Hector Lareau for V. Gaydos 2920 15th Avenue Moline, IL 61265 (309) 764-0775

Joel Brown for J.E. White 416 Main Street, Suite 1300 Peoria, IL 61602 Phone: 309-740-7268

3. United States v. Lee, 07 CR 40048, 07 CR 40046, Central District of Illinois, U.S. District Judge Michael M. Mihm.

For over a decade, the Lee family ran a violent, drug-distribution network in a densely populated neighborhood in Rock Island. In fact, the police were called to what has become known as "Big Mama's House," the headquarters of the operation, more than 300 times. I prosecuted eight members of the family, including the matriarch, known as "Big Mama," for conspiring to distribute crack cocaine. Since these violent offenders have been convicted, the neighborhood has experienced a significant reduction in violent crime. The impact this investigation had on the community is best described by the

statements of the Rock Island Police Chief during the demolition of Big Mama's house. Chief Wright said, "Today we're tearing down a nuisance house – on behalf of appreciative neighbors and every police officer who has dealt with a notorious house on their beat – who wished they could tear it down and give it to the neighbors. For many years, this house and individuals arrested in this investigation, were very visible signs of the destruction resulting from crack cocaine and violence."

Opposing Counsel:

Michael Galvin for J.J. Lee 1800 3rd Avenue Rock Island, IL 61201 (309) 793-1304

G. Trent Marquis for K. Lee 400 16th Street Rock Island, IL 61201 (309) 786-6329

Steve Hanna for V. Lee 418 16th Street Moline, IL 61265 (309) 797-9000

John Lonergan for F. Lee 411 Hamilton Boulevard, Suite 1708 Peoria, IL 61602 (309) 673-3939

Chris Kutsunis for A. Lee 1630 5th Ave, Suite 512 Moline, IL 61265, (309) 277-8141

Andrew Larson for H. Villareal 3610 25th Avenue, Suite 2 Moline, IL 61265 (309) 757-7500

James Clements for K. Lee 1503 Brady Street Davenport, IA 52803 (563) 323-9715

Lee Smith for S. Carter 416 Main Street, Sixth Floor Peoria, IL 61602 (309) 674-1025 4. United States v. Neal, 06 CR 40066, Central District of Illinois, U.S. District Judges Michael M. Mihm and Joe Billy McDade.

Organized Crime Drug Enforcement Task Force Operation Plowking - William "Tank" Neal, a General in the Black P-Stones street gang, moved to the Quad Cities in the early 2000s to sell cocaine. Neal recruited several of his fellow gang members to relocate from Chicago and Wisconsin to the Quad Cities to assist in his drug-distribution business. Neal also recruited several local residents to help sell drugs. The organization was responsible for distributing multiple kilograms of crack cocaine each month and was considered, at the time, to be the largest supplier of cocaine in East Moline, Illinois. I was sole counsel throughout the investigation, which involved numerous controlled buys, extensive surveillance, phone analysis, and multiple search warrants. The "take-down" yielded kilos of cocaine, firearms, and over \$100,000 cash. All but one of the 14 defendants pleaded guilty. I was lead counsel in the weeklong trial of Jesse Adams who was convicted and sentenced to life in prison. This investigation and resulting prosecutions led to the complete dismantling of the Black P-Stone street gang in East Moline.

Co-counsel at trial: Gregg Walters

United States Attorney's Office 211 Fulton Street, Suite 400 Peoria, IL 61602

(309) 671-7050

Opposing Counsel:

David Treimer for W. Neal 601 Brady Street - Suite 211 Davenport, IA 52803 (563) 323-7889

Murray Bell for M. Gibson 125 Kirkwood Boulevard Davenport, IA 52803 (563) 326-4095

John Steckel for K. Wilson 1600 4th Avenue, 400 Rock Island, IL 61201 (309) 786-2000

Donovan Robertson for T. Osburn 100 - 17th Street Rock Island, IL 61201 (309) 795-6217 Mark Wertz for A. McPhearson 456 Fulton Street Peoria, IL 61602 (309) 676-8986

Geoffrey Campbell for J. Gibson 1705 2nd Avenue Rock Island, IL 61201 (309) 788-5297

Andrew Larson for D. Weathers 3610 25th Avenue, Suite 2 Moline, IL 61265 (309) 757-7500

Ron Hanna Jr. for E. Scott 411 Hamilton Boulevard, Suite 1908 Peoria, IL 61602 (309) 740-9121

Jeffrey Flanagan for J. Weaver 411 Hamilton Boulevard Peoria, IL 61602 (309) 671-9701

Timothy Cusack for M. Brown PO Box 10461 Peoria, IL 61612 (309) 678-6969

Jack Dusthimer for J. Adams 1503 Brady Street Davenport, IA 52803 (563) 323-8344

James Clements for J. Keegan 1503 Brady Street Davenport, IA 52803 (563) 323-9715

Murray Bell for F. Stanley 125 Kirkwood Boulevard Davenport, IA 52803 (563) 326-4095 George Taseff for J. McCarthy Peoria Assistant Federal Defender 401 Main Street, Suite 1500 Peoria, IL 61602 (309) 671-7891

5. United States v. Seefeldt, 04 CR 40080, Central District of Illinois, U.S. District Judge Michael M. Mihm.

I prosecuted this defendant who fraudulently received benefits, including money and lodging, by falsely claiming to be a victim of Hurricane Katrina. He led officials at FEMA and the American Red Cross to believe that he had sustained damage to his personal property as a result of Hurricane Katrina despite the fact he had not lived in Biloxi, Mississippi since birth. Seefeldt pleaded guilty and was sentenced to prison for defrauding the government of thousands of dollars.

Opposing Counsel: George Taseff

Peoria Assistant Federal Defender 401 Main Street, Suite 1500 Peoria, IL 61602 (309) 671-7891

6. United States v. McConaghy, 07 CR 40025, Central District of Illinois, U.S. District Judge Michael M. Mihm.

McConaghy, using computers at work and home, downloaded child pornography from the Internet. He possessed over 3,000 images depicting identified child victims and almost 1,000 videos depicting identified child victims. I sought, and obtained, sentencing enhancements due to the very young ages of the victims, the sadistic and maschiocstic nature of the pornography, and the extreme number of images. McConaghy was sentenced to 73 months in prison despite having no prior criminal record.

Opposing Counsel: James Mertes

102 East Route 30 Rock Falls, IL 61071 (815) 561-4378

7. United States v. Carrol, 05 CR 400002, Central District of Illinois, U.S. District Judge Joe Billy McDade, aff'd 228 Fed.Appx. 605 (7th Cir. 2007).

Operation Rocktown – Lemuel Carrol, a Gangster Disciple, distributed over 47 kilos of crack cocaine in the Quad Cities over a six-year time period. Carrol eluded prosecution for drug charges in the past and was "Number 1" on the Rock Island Police Department's Top Ten list for years. I led the investigation and indictment of Carrol on a purely historical drug conspiracy case. I was lead counsel in the four-day jury trial where Carrol was convicted and sentenced to over 20 years in prison. The trial was particularly

challenging due to the volume of cooperating defendants as witnesses and the degree of corroborative evidence presented.

Co-counsel at trial: Matt Cannon

United States Attorney's Office 1830 2nd Avenue, Third Floor Rock Island, IL 61201 (309) 793-5884

Opposing Counsel: Murray Bell

125 Kirkwood Boulevard Davenport, IA 52803 (563) 326-4095

8. United States v. Darif, 04 CR 40047, Central District of Illinois, U.S. District Judge Joe Billy McDade, aff d 446 F.3d 701 (7th Cir. 2006).

Darif, a native of Morocco, paid \$3,000 to Dianna, a US citizen, to fly to Morocco, marry him, and help him obtain a US visa. Despite being complete strangers, Dianna traveled to Morocco, met Darif with a handshake, married him, and flew back home. After Darif was indicted, he wrote Dianna threatening letters from jail instructing her to tell the jury that they were in love and she was crazy, among other things. The defense strategy was one of love, specifically that this was a valid marriage between two people who fell in love over the course of three days. I was co-counsel at Darif's trial, which resulted in his convictions for marriage fraud and witness tampering. I also contributed to the drafting of the brief on appeal. At trial we were faced with several varied, complex legal issues including a claim of the marital communications and testimonial privileges, witness immunity, and contested jury instructions. The resulting appeal and decision is often cited in marriage fraud cases to define the elements of the offense.

Co-counsel: John Mehochko

United States Attorney's Office 1830 2nd Avenue, Third Floor Rock Island, IL 61201 (309) 793-5884

Opposing Counsel: Raphael Scheetz

1921 51st St NE Cedar Rapids, IA 52402 (319) 378-7416

9. United States v. Meegan, 08 CR 40058, Central District of Illinois, U.S. Magistrate Judge Thomas J. Shields.

I prosecuted the defendant, the Executive Director of the Moline Housing Authority, who improperly used her position to authorize and award public housing benefits to

individuals before they would have otherwise been eligible. Her actions delayed or denied public housing and housing assistance to other legitimate applicants who were waiting their turn. Meegan pleaded guilty to falsifying HUD records.

Opposing Counsel: Donovan Robertson

100 - 17th Street Rock Island, IL 61201 (309) 795-6217

10. United States v. Leichty, 04 CR 40102, Central District of Illinois, U.S. District Judge Joe Billy McDade.

I prosecuted this defendant, who embezzled nearly \$800,000 from her employer, the Quad City Garage Policy Group (QCGPG), over a two and one-half year period. The QCGPG maintained and serviced the municipal bus fleets for Rock Island County and the City of Davenport. Due to her position as a Senior Financial Specialist, Leichty was able to manipulate the accounting computer software to successfully complete a highly-sophisticated embezzlement scheme. Leichty was also the main contact with the QCGPG's accounting firm, and as such, she provided false financial statements and records during audits. Because of this prosecution, the QCGPG restructured its financial department and implemented oversight protocols.

Opposing Counsel: Kevin Halligan

5505 Victoria Avenue Davenport, IA 52807 (563) 344-4900

18. <u>Legal Activities</u>: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I conduct numerous Grand Jury investigations and present evidence before the Grand Jury each month. Sometimes the most significant matters do not end with convictions, years of time in prison, or even charges being filed. As a prosecutor I have the enormous responsibility and burden of prosecutorial discretion. There are many times I could have charged a target but determined that it was not the right thing to do, or that it was a case better suited for prosecution in state court. The same goes for deciding who is a witness and who becomes a defendant.

Since 2007, I have been the Violent Crimes Chief for the Central District of Illinois and I have simultaneously served as our office's Department of Justice Project Safe Neighborhoods Coordinator and Anti-Gang Coordinator. Since 2009, I have also served

as the Organized Crime Drug Enforcement Task Force Co-Coordinator. In these capacities I provide the attorneys and support staff in the district with training regarding the foregoing violent crime initiatives. I also provide guidance to individual attorneys regarding their violent crime caseload. I am responsible for implementing DOJ initiatives throughout the 46 counties the district serves by traveling throughout the district meeting with local, state and federal law enforcement agencies to promote partnerships with our office. I also serve as the FBI Gang Task Force Assistant U.S. Attorney, handling major gang investigations that target nationally known gangs, such as the Latin Kings and Gangster Disciples.

Rock Island, Illinois, is located directly across the Mississippi River from Davenport, Iowa. Accordingly, our branch of the United States Attorney's Office works extensively with our colleagues and with the magistrate judge presiding in Davenport for the Southern District of Iowa. Due to the close geographical proximity, our offices and our federal, state, and local law enforcement partners frequently work together on investigations and prosecutions. I am designated as a Special Assistant United States Attorney for the Southern District of Iowa in connection with this work.

I have performed no lobbying activities on behalf of any client or organization.

19. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught courses.

20. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. <u>Outside Commitments During Court Service</u>: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

For the past few years I have taught on some evenings and weekends during the winter as a ski instructor at our local ski hill. I plan to continue this employment unless it would in anyway interfere with my ability to serve as judge.

 Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. <u>Statement of Net Worth</u>: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would recuse myself from all cases in which I played any role as an Assistant United States Attorney. In addition, my father-in-law and my brother-in-law are attorneys; although they have not generally practiced in federal court, I would recuse from any case in which they were involved.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

25. <u>Pro Bono Work</u>: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My full-time work since 1999 has been in public service and I have always had a strong commitment to helping the disadvantaged. After college, I dedicated a year to service as a volunteer for a non-profit organization located in Washington, D.C. I served as a community organizer and coordinated several low-income housing project tenant associations by drafting by-laws, supervising meetings, and canvassing for community support. I also worked with attorneys from the Georgetown Law Center Low-Income Housing Clinic, as well as local politicians, to negotiate grants from HUD for improved security and resident programs. In part, it was due to this exposure of how legal assistance could directly benefit a community that I decided to pursue a legal career.

I also support the endeavors of Prairie State Legal Services financially and devote time and money to several programs that serve the community including the local Children's Advocacy Center, the Student Hunger Drive, the Child Abuse Council, Alternatives for the Older Adults, the Boys and Girls Club, and several others.

26. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

Senator Richard J. Durbin established a bipartisan screening committee, chaired by Mr. James Potter, to evaluate applications for judicial vacancies in the Central District of Illinois. After submitting an application, on May 19, 2010, I interviewed with the screening committee in Peoria on May 26, 2010. The committee recommended my candidacy, along with others, to Senator Durbin. I interviewed with Senator Durbin at his Springfield office on May 29, 2010. In late June 2010, Senator Durbin forwarded my name, along with others, to the White House for consideration for nomination by the President.

Since July 2, 2010, I have been in contact with officials from the Department of Justice Office of Legal Policy regarding the pre-nomination process. On August 24, 2010, I interviewed in Washington, D.C., with attorneys from the White House Counsel's Office and the Department of Justice. The President submitted my nomination to the Senate on November 17, 2010.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics

Rev. 1/2010	NOMINATION FILING	in Government Act of 1978 (5 U.S.C. app. §§ 101-111)
1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Darrow, Saro L.	U.S. District Court for the Central District of Illinois	11/17/2010
Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge	Sa. Report Type (rheck appropriate type) Wominstlen, Date 11/17/2010 Initial Annual Final Sh. Amended Report	6. Reporting Period 1/1/2009 te 11/5/2010
7. Chambers or Office Address 1830 2nd Avenue Rock Island, Illinois 61201	 On the basis of the information contained in this Report conditions presisting thereto, it is, in my opinion, in of with applicable into and regulations. Reviewing Officer 	ожер Н в пое
	ES: The instructions occompanying this form must be followed. Complex for each part where you have no reportable information. Sign on la	
NONE (No reportable positions.) POSITION		ANIZATION/ENTITY
i.		
I. AGREEMENTS. (Reporting individual or NONE (No reportable agreements.)	nly; see pp. 14-16 of filing instructions.)	
DATE	PARTIES AND TERMS	
2		

FINANCIAL DISCLOSURE	REPORT Nume	of Person Reporting		Date of Report
Page 2 of 6	1	ow, Sara L.		11/17/2010
III. NON-INVESTMENT INC A. Filer's Non-Investment Income NONE (No reportable nan-inv		il and spouse; see pp. 17-24 of filing in	rsiractions.)	
DATE	SOU	RCE AND TYPE	(you	INCOME urs, not spouse's)
I.				
2.				
3.				
4,				
B. Spouse's Non-Investment Income (Dollar amount not required except for honoruria) NONE (No reportable non-inv DATE	estment income.)	s potition of the repurting year, compli RCE AND TYPE	rie this section.	
1. 2010	self employed, attorney			
2. 2010	Mercer County, IL public ded	ender - salary		
3. 2010	elected township trustee, Sou	ılı Rock İsland Township, İllinois	- safary	
4. 2009	self employed, automey		***************************************	·
5. 2009	Mcreer County, IL public def	ender - salary		
6. 2009	elected township trustee, Sou	th Rock Island Township, Illinois	- 5a lary	
IV. REIMBURSEMENTS tra (mechalize thear to spouse and dependent children; see NONE (No reportable relmbur SOURCE DA 1. EXEMPT 2. 3.	pp. 25-27 of filing instructions.)		E ITEMS PAII	D OR PROVIDED
4.				

FINANCIAL DISCLOSURE REPORT	Name of Person Reposting	Date of Report
Page 3 of 6	Darrety, Sara L.	11/17/2010
V. GIFTS. (Includes these to spouse and dependent clithiren; see p	p. 28-34 of filing instructions.)	
NONE (No reportable gifts.)		
SOURCE	DESCRIPTION	VALUE
I. EXEMPT		
2.		
_		
5.		
VI. LIABILITIES. (Includes those of spouse and dependent.	children; zee pp. 32-33 of filling instructions.)	
NONE (No reportable liabilities.)	, , ,	
CREDITOR	DESCRIPTION	ALUE CODE
1.		
2.		
3.		
4.		
5.		

	NANCIAL DISCLOSURE RI	EPOF	T	Name of Person						Date of Report
Ра ——	ge 4 of 6			Darrow, Sar	۵ L.					13/17/2010
VII	I. INVESTMENTS and TRUS				includes tho	se of spouse and d	ependent chi	ldren; sec	· рр. 34-6	G of filing instructions.)
므										
	A. Description of Assets (including trust assets)		O. me during ning period	Gross va	lue at end ing period		Transacti	D. Ons dwing		g period
	Place "(X)" after each asset exemps from prior disclosure	(I) Amount Code I (A-H)	(2) Type (e.g. div., rent, or int.)		(2) Value Method Code 3 (Q-W)	(1) Type (c.g., buy, sell, redemption)	(2) Date nem/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/selter (if private sransaction)
I.	IRA #1-Vanguard STAR Fund	В	Dividen	i L	т				<u> </u>	
2.	IRA #2	В	Dividen	i K	Т					
3.	-Vanguard Inti Growth Fund									
4.	-Vanguard 500 Index Fund									
5.	-Vanguard Value Index Fund									***************************************
6.	American Bank and Trust (CDs)	٨	Int/Div	. к	Т					
7.	Illinois Bright Start 529 Plan (age/risk based portfolio)		None	į	Т					
ß,	College Savings towa 529 Plan (age/risk based portfolio)		None	J	т					
9.	Law Offices of Clarence Darrow, PA		None	3	w					
10,	US Government Bonds, Series EE		None	1	Т					
11.	American Bank and Trust checking/savings	Ą	Interest	ز	T					
12.	Illinois Municipal Retirement Fund		None	3	т					
13.										
14.										
15.										
16.										

i . Income: Guin Codec	A =\$1,000 or less	9 +\$1,001 - \$2,500	C =57,501 - \$5,000	D -\$1,001 - \$15,000	E ~\$i 5,00) ~ \$\$0,00
(See Columns B4 and D4)	F =\$50,001 - \$100,000	G~\$100,001 - \$1,000,000	H1~\$1,000,001 - \$5,000,000	112 -More than \$5,000,000	
2. Value Cottes	J =515,000 or less	K =\$15,001 -\$55,000	L ~\$50,001 - \$100,000	M =\$100,001 - \$250,000	
(Sec Columns C1 and D3)	N=\$250,001 - \$500,000	000,000,12 - 100,000,000	P1 =\$1,000,001 - \$5,000,000	72~\$5,000,001~\$25,000,000	
	P3 =\$25,000,001 -\$50,000,000		P4 -Mare than \$50,000,000		
3. Value Method Codes	Q =Appmisal	R =Cost (Rest Estate Only)	S=Assessment	T =Cash Market	
(See Column C2)	U -Book Value	V≃Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT	Nome of Person Reporting	Dute of Report
Page 5 of 6	Darrow, Sara L.	11/17/2010

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 6 of 6	Darrow, Sara L.	11/17/2010

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and beliaf, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside complayment and honoraria and the acceptance of gifts which have been reported are in compilance with the provisions of \$ U.S.C. app. § 501 et. seq., \$ U.S.C. § 7353, and Judicial Conference regulations.

Signature Sand

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

Sara Darrow

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, lowns, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES			
Cash on hand and in banks	2	900	Notes payable to banks-secured (auto)		29	516
U.S. Government securities – Series EE bonds	3	700	Notes payable to banks-unsecured			
Listed securities			Notes payable to relatives			
Unlisted securities			Notes payable to others			
Accounts and notes receivable:			Accounts and bills due		2	290
Due from relatives and friends			Unpaid income tax			
Due from others			Other unpaid income and interest			
Doubtful			Real estate mortgages payable - primary residence		309	293
Real estate owned - primary residence	370	000	Chattel mortgages and other fiens payable			
Real estate mortgages receivable			Other debts-itemize:			
Autos and other personal property	52	000				
Cash value-life insurance			<u>-</u>			
Other assets itemize:						
- American Bank & Trust Co. CDs	25	100				
- Thrift Savings Plan	97	237				
- Other Retirement Accounts see schedule	104	956	Total liabilities		341	099
- State College Savings Plans (no control)	16	101	Net Worth		330	895
Total Assets	671	994	Total liabilities and net worth		671	994
CONTINGENT LIABILITIES			GENERAL INFORMATION			
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	NO		
On leases or contracts			Are you a defendant in any suits or legal actions?	NO		
Legel Claims			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax						
Other special debt						

300

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Securities Held in Retirement Accounts (other than TSP)				
Vanguard STAR Fund	\$ 51,200			
Vanguard Value Index Fund	11,250			
Vanguard 500 Index Fund	29,250			
Vanguard International Growth Fund	6,800			
Illinois Municipal Retirement Fund cash value	6,456			
Total Securities Held in Retirement Accounts	104,956			

<u>AFFIDAVIT</u>

I, <u>Sara Lynn Darrow</u>, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

11-15-10 (DATE)

DFFICIAL SEAL
WILLIAM M. WALKER
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES 7/23-2013

(TATIVIE)

AVOTA DVO

Sara L. Darrow

January 5, 2011

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on November 17, 2010, to be United States District Judge for the Central District of Illinois. I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

Sata Darrow

ec;

The Honorable Charles Grassley Ranking Member Committee on the Judiciary United States Senate Washington, DC 20510 AO 10 Rev. 1/2008

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. upp. §§ 101-111)

Rev. 1/2008	NOMIN	ATION FILING	(5 U.S.C. upp. §§ 101-111)	
1. Person Reporting (late)	nome, first, middle initial)	2. Court or Organization	3. Date of Report	
Darrow, Sara L.		U.S. District Court for the Central District of Illinois	1/5/2011	
4. Title (Anicia III judges i magistrate judges i	indicate active or senior status; adicate full- or part-time)	Sa. Report Type (check appropriate type)	5. Reporting Period	
District Judge	, ,	Mornination, Date 1/5/2011)/1/2010	
Listrict Judge		Initial Annual Finel	12/30/2010	
7. Chambers of Office Ad	binese	Amended Report On the basis of the information contained in this Report and		
1830 2nd Avenue		modifications pertaining thereto, it is, in my opinion, in con- with applicable laws and regulations.	pliance	
Rock Island, Illinois 61	201			
		Raviewing Officer	Date	
	IMPORTANT NOTES: The instru checking the NONE box for each pa	utions accompanying this form must be followed. Complete rt where you have no reportable information. Sign on last p	all parts, page,	
. POSITIONS	(Reporting individual only; see pp. 9-13 of filing	incomments and the second seco		
_	eportable positions.)	and account of		
MONEGNON	eportuoie positions.;			
	<u>POSITION</u>	NAME OF ORGAN	IZATION/ENTITY	
l <u>.</u>				
<u>.</u>				
II. AGREEMEN	NTS. (Reporting individual only; see pp. 14-10	Coff films include from a		
_	eportable agreements.)	- 17 1		
THOME INDIA	фончоне изгестена.)			
DATE	i	PARTIES AND TERMS		
,				

FINANCIAL DISCLOS	URE REPORT	Name of Person Report		Date of Report		
Page 2 of 6		Darrew, Sara L.			1/5/2011	
III. NON-INVESTMENT	l' INCOME. (Reponis	ng individual and spoute; see	pp. 17-24 of filing instructions.)			
A. Filer's Non-Investment Inc	ome					
NONE (No reportable n	on-investment income.)				
DATE		SOURCE AND T	YPE		INCOME irs, not spouse's)	
I.						
2.						
3.						
4.						
(Dollar amonus not required except for honor NONE (No reportable n DATE 1. 2010 2. 2010	on-investment income.	SOURCE AND Trouit court judge - salary	ТұрЕ.			
3, 2010	Morrey County 11	, public defender - salary	······································			
4. 2010			Township, Illinois - salary			
IV. REIMBURSEMENTS - transportation, todging, food, entertainment. (Include: thise in sponse and depondent children: see pp. 23-27 of filing instructions.) NONE (No reportable reimbursements.)						
SOURCE	DATES	LOCATION	PURPOSE	ITEMS DAI	D OR PROVIDED	
1. Exempl	Maria	EXALINE	TORTON	TI GING FAI	ZOSTROTIDED	
2.						
3.						
4.						

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Mane of Person Reporting Darrow, Sara L.	Date of Report 1/5/2011
V. GIFTS. (Includes those to spouse and dependent children; see pp	. 28-31 of filing instructions.)	
NONE (No reportable gifts.)		
SOURCE	DESCRIPTION	VALUE
1. Exemps		
2.		47
3.		
4.		
S		
VI. LIABILITIES. (Includes these of spower and dependens c	hildnen; see pp. 32-33 of filing instructions.)	
NONE (No reportable liabilities.)		
CREDITOR	DESCRIPTION	VALUE CODE
1.		
2.		
3.		
4		
5.		

FI	NANCIAL DIS	CI ASTIDE DI	รษกข	т	Name of Perso	n Reporting					Date of Report	
FINANCIAL DISCLOSURE REPORT Page 4 of 6				`	Darrow, Sara L.						1/5/2011	
VIJ	. INVESTME	NTS and TRUS	TS -	income, volu	e, transactions	(includes tho	se of spoure and d	ependeni ch	ildren; saa	рр. 34-60	of filing instructions.)	
	NONE (No rep	ortable income, ass	ets. or	transacti	ions.)							
	Α.			в		c. '		٠	D.			
	Description of Assets (including stast assets)		Income during reporting period		Gross value at end of reporting period		Transactions during reports				ig period	
	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		(1)	(2)	(1)	(2)	(1)	1 (2)	(3)	(4)	(5)	
	Place "(X)" after exempt from prior		Amount Code 1	Type (e.g.		, Value Method	Type (e.g., hey, sell,	Date . Month .	Value Code 2	Gain Code I	ldentity of buyer/seller	
	5.52.J. (1.00.) p. 1.		(A-H)	or int.)	G-P1	Code 3 (Q-W)	redemption)	Day	(J-P)	(A-H)	(if private transaction)	
I.	[RA #1-Vanguard 5T	AR Fund	В	Dividen	d 1.	т		T	Γ			
2.	IRA J2		8	Dividen	J K	т			†			
3.	-Vanguard Intl Grow	th Fund										
4.	-Vanguard 500 Index	Fund										
5.	-Vanguard Value Ind	ex Fund										
6.	American Bank and I	Frust (CDs)	Α	Int/Div	K	Т						
7.	Illinois Bright Start 5 portfolio)	29 Plan (age/risk based		None	,	Т						
8.	Cotlege Savings low: sed portfolio)	a 529 Plan (age/risk ba		None	3	Т						
9.	Accounts receivable of Clarence Darrow	due from Law Offices o		None	}	w						
10.). US Government Bonds, Series EE			Молс	J	Т						
11.	American Bank and	Frust checking/savings	Α	Interest		Т						
12.	Illinois Municipal Re	tirement Fund		None	3	Т						
13.												
14.												
15.												
16.												
17.												
											-	
1 Income Gara Craies: A #\$1,000 term (See Cylemes 81 and D4) F=\$50,001 - \$100,000		8 = \$1,000 · \$2,50 G = \$100,001 · \$5,					- \$5,000 D = \$5,000 + \$15,000 mmt - \$5,000,000 H3 = Merc than \$5,000,000			E =5(5)x/(+55)/(cn)		
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FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report		
Page 5 of 6	Darrow, Sara L.	1/5/2011		

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Report)

FINANCIAL DISCLOSURE REPORT	Name of Parson Reporting	Date of Report		
Page 6 of 6	Darraw, Sare L.	1/5/20(1		
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IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my apouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-dictiosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature

NOTE: ANY INDIVIDUAL WHO KNOWING! Y AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (S U.S.C. app. § 10-4)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

Sara Darrow

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES				
Cash on hand and in banks	7 600		Notes payable to banks-secured (auto)		26	930	
U.S. Government securities - Series EE bonds	3	700	Notes payable to banks-unsecured				
Listed securities			Notes payable to relatives				
Unlisted securities			Notes payable to others				
Accounts and notes receivable:			Accounts and bills due				
Due from relatives and friends			Unpaid income tax				
Due from others			Other unpaid income and interest				
Doubtful			Real estate mortgages payable - primary residence		308	651	
Real estate owned - primary residence	370	000	Chattel mortgages and other liens payable				
Real estate mortgages receivable			Other debts-itemize:				
Autos and other personal property	52	000					
Cash value-life insurance							
Other assets itemize:							
- American Bank & Trust Co. CDs	27	200					
- Thrift Savings Plan	103	792					
- Other Retirement Accounts - see schedule	107	756	Total liabilities		335	581	
- State College Savings Plans (no control)	16	101	Net Worth		352	568	
Total Assets	688	149	Total liabilities and net worth		688	149	
CONTINGENT LIABILITIES			GENERAL INFORMATION				
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	NO			
On leases or contracts			Are you a defendant in any suits or legal actions?	NO			
Logal Claims			Have you ever taken bankruptcy?	NO			
Provision for Federal Income Tax							
Other special debt							

308

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Securities Held in Retirement Accounts (other than TSP)

Vanguard STAR Fund	\$ 51,700
Vanguard Value Index Fund	11,650
Vanguard 500 Index Fund	31,150
Vanguard International Growth Fund	6,800
Illinois Municipal Retirement Fund cash value	6,456
Total Securities Held in Retirement Accounts	107,756

Judge Ramos, over the last 10 years, you have presided over 1,200 criminal, civil, and family law cases that went to verdict or judgment, and yet only eight of those cases have been reversed. That is less than 1 percent of the cases that you have presided over. It is a pretty impressive rate.

How has your work in the 347th district court for Nueces County prepared you to serve as a District Judge for the southern district

of Texas?

Judge RAMOS. Thank you, Senator. As you said, for the last 10 years, I've had the privilege of serving as a district court judge in a court of general jurisdiction. So I've presided over both criminal and civil cases, and I think that judicial experience will benefit me greatly, if I am confirmed, as a district court judge.

Thank you.

Senator Franken. Thank you.

Judge Jackson, a little over 10 years ago, you presided over a sexual assault case involving a 28-year-old man named Charles Brooks, who sexually assaulted a 12-year-old victim.

I understand he entered what is called an Alford plea, where he accepted the charge, but asserted innocence. You initially sentenced Mr. Brooks to 10 years in prison.

Judge Jackson, you subsequently reduced Mr. Brooks' sentence

down to a 2-year jail term plus 10 years probation.

When the *Rocky Mountain News* ran a story criticizing your decision, you wrote a letter to the editor defending it. You said that the victim was not raped, although there was, quote, "inappropriate behavior and touching." This is very unusual for a judge to write such a letter.

My understanding, Judge Jackson, is that a lot of people were very concerned about how you handled the case, and, to be honest, I am concerned about it, too.

Can you tell us about the case and why you made the decision that you did?

Judge JACKSON. Yes, I can and I thank you for the opportunity to do that.

Senator, as you might expect, sex offense cases are among the most difficult that we have and certainly the most victim-sensitive. And this case happened to be, I think, the first case of that kind that I had had as a judge, but I did sentence Charles Brooks to 10 years in prison because I thought that was exactly what he deserved.

Something happened in that case that is unique to all the sex offenses cases I have had, and I think I have had 300 or 400 probably in my career by now.

Brooks was in prison, but Brooks only communicates through sign interpreters. He is hearing impaired and needs an interpreter to communicate.

In addition to that, he has mental health issues. But the main thing was the speech difficulty, hearing difficulty, and I was told that he was not getting any offense-specific treatment, any sex offense treatment in prison; not a knock on the prison, but just a combination of resources and the lack of interpreters.

I was concerned, Senator, about the community safety aspect of that, because 10 years or not, he was going to come out of the pris-

on and be back in the community. And it was extremely important, it was emphasized by our probation department how critical it was that he get treatment.

And so I agreed to a proposal that was made to me to bring him back to our local jail, to incarcerate him for the maximum term possible, but to get him the offense-specific treatment with interpretation that everyone thought he needed.

I agreed to that on the condition that he successfully complete the treatment program and that if he made it onto probation, that he be absolutely without any type of violation, zero tolerance. In fact, Mr. Brooks did reasonably well, quite well in treatment

In fact, Mr. Brooks did reasonably well, quite well in treatment and he served his jail sentence, but very shortly after he completed the jail sentence, he was dismissed from the treatment program not because he wasn't complying, but because he would not admit his crime.

He, as you said, entered an Alford plea and he, from the beginning to the end, denied that he was guilty. And you cannot complete offense-specific treatment in Colorado unless you admit.

That was a violation of his probation and I did exactly what I said I would do. I revoked his probation, put him back in prison, and he served out his 10-year sentence.

And, Senator, if I can add, I'm proud to say that the district attorney, who was the DA at the time, who brought the case, the deputy district attorney who actually prosecuted the case, the district attorney in our jurisdiction who is there today and his chief deputies, all of those support me for this position, as Senator Udall said, to the Attorney General of the state and the U.S. attorney, and I think they based that on 12 years of how I've handled cases like this.

As far as the newspaper, I think that was a poor decision, sir. It was frustrating to me as a new judge to see a case described in the paper that I didn't think was describing the case that I had or the reasons why I did what I did.

I think it probably is not a good idea for a judge to write a letter like that. Sometimes you learn these things the hard way.

But I will say, for what little it might be worth, that the reporter who wrote the article followed my career on the bench for several years after that and she is one of the letters of support that you have in that volume that Senator Udall presented.

It doesn't mean I did the right thing on the letter. I shouldn't have done it. I made a mistake and I learned from it.

Senator Franken. Thank you.

Judge JACKSON. Thank you, Senator.

Senator Franken. Thank you, Judge.

Senator Durbin.

Senator DURBIN. Thank you, Chairman Franken. I will get him back on our side, I promise.

[Laughter.]

Senator Durbin. There is one thing I did not mention when I introduced Ms. Darrow to the Judiciary Committee, and, that is, what a positive impression she made on me when I interviewed her

I certainly knew her father. I know her father-in-law, I have known him for years, a close friend of mine, and I had learned quite a bit about her background as a prosecutor and legal practice. And as you can see from the biographical material, she has had a

14-year legal career.

And what you may recall is when she introduced her children, all six of them, but the oldest is 14, how this woman has been able to balance this amazing professional career with this beautiful family is nothing short of a miracle.

Senator Franken. Hence, the "wow."

[Laughter.]

Senator Durbin. And so I was so impressed and still am and I am sure glad that you are here. And I do not have any questions, because if I did, I would not have brought you here. But I am glad that you have had an opportunity to come to this hearing.

Ms. DARROW. Thank you, Senator.

I would like to ask the other two nominees, if I might, a few questions.

Judge Ramos, I am impressed with your career.

Judge RAMOS. Thank you, Senator.

Senator Durbin. It is an extraordinary career. It is primarily oriented toward civil litigation. I think you have said as much in responding to questions. And I think you understand that if this is like most Federal district courts, you are going to have a lot of criminal practice before you.

Tell me how you would explain to the members of the Committee that you will be prepared for that seismic shift in your practice.

Judge RAMOS. Thank you, Senator. When I was in private practice, my practice was a civil practice. But since I've been on the bench for the last 10 years, I'm in a court of general jurisdiction. So it is—I preside over civil and criminal cases and I-

Senator Durbin. What percentage would you say it is? Judge Ramos. I've tried over 100 jury trials in civil cases—felony cases. So I think that experience will carry over.

Senator DURBIN. Criminal felony.

Judge RAMOS. Criminal felony, yes, sir.

Senator DURBIN. I see. Well, that certainly is adequate for that, more than adequate for that.

Judge RAMOS. Thank you, Senator.

Senator DURBIN. And I also notice your pride in your own heritage and the opportunities that this country has brought you. You live in a state which the last census indicates has a dramatic upsurge in the Hispanic population, maybe the largest in the nation, I am not sure, but close, if not the largest.

And there are always questions of justice related to newcomers to America. Tell me how you would balance that in a courtroom, dealing with the law and the reality of what life is like for new-

comers to America.

Judge RAMOS. Right. Similar to what I think as a judge, you should treat all persons equally regardless of who they are or where they come from, and I have done that for the last 10 years. I do think it's important for a judge to certainly understand where people come from, the situation they find themselves in, and how your rulings may affect their lives.

However, sympathy, a judge should not allow sympathy to play any role in a judge's decisions. So I think I have treated everyone who has come before my court with respect and equality for the last 10 years and I would continue to do that.

Thank you.

Senator Durbin. Judge Jackson, I read the same case that Senator Franken asked about and I am sure, across your judicial career, it is probably one of the more controversial decisions you have ever been engaged in.

And I noted your acknowledgment that you may have made a mistake in sending a letter to the newspaper. As hard as it may be to believe, occasionally, Senators make mistakes and I am one of them.

Judge JACKSON. Well, thank you for that.

Senator DURBIN. I think what really many of us struggle with who have never had to face your responsibility in trying to decide the appropriate sentence for someone accused of a sex crime is kind of this haunting question about whether rehabilitation is even possible in this situation.

We hear so many cases of repeat offenders with sex crimes. Now, you have said that it has been your experience, that you have had several hundred of these offenders before you, and I would just like to ask you if you could comment on that experience and what you can bring to us in terms of our understanding of these criminal defendants.

Judge Jackson. Yes. Thank you for that question, Senator. Our law changed in 1998 and now we have what is called a Lifetime Supervision of Sex Offenders Act, and for certain classes of sex offense felonies, we are required to sentence from a minimum to life. But that same law from our legislature says that the presumption is that a sex offender will always be a sex offender, but with treatment, some can be released to the community.

We have a sex offense management board, we have parole boards who make decisions on which of these people can be released, and there have been a number now who have been sentenced to life sentences who actually have been released back into the community.

It really is a product of do they get treatment, do they respond to the treatment, what is their criminal history. For example, in the case that I had that's been the subject of discussion, this gentleman had not only not had a prior sex offense, but had not any prior felonies or significant offenses at all. Someone like that I think is more treatable perhaps.

Can I tell you, sir, that with treatment, someone is no risk anymore? Absolutely I cannot. What I can tell you is that if they get treatment and do well, and, of course, they register as sex offenders and there are a number of other things that apply to them, that when they come back into the community, we're a much safer community than we would have been had they not gone through that treatment.

Senator DURBIN. Did I understand your testimony that this individual, once brought back for local incarceration and this offender treatment program, when he would not admit his guilt, was re-incarcerated? So he was never released to the public.

Judge JACKSON. That is correct. He—that is almost correct. He was released on probation from the conclusion of his jail sentence

for a period of—I'm trying to remember—I would say 2 or 3 months, but that's when his treatment program was terminated and that's why I put him back in prison to serve out his sentence.

Senator Durbin. I see.

Ms. Darrow, you made a long trip out here, so I am going to ask you one thing about your background, if I might. And that is, you were involved in a pretty significant prosecution of drug gangs in the Quad Cities area, the Rock Island area there.

Could you tell us a little bit about your lead in these gang inves-

tigations and prosecutions?

Ms. DARROW. Yes. Thank you, Senator. I think you're referring to my prosecution of the Latin Kings street gang. At the time, they were the largest supplier of drugs in the East Molina area, which is one of the main cities in my jurisdiction.

And they were—we prosecuted the local leader of the street gang, as well as his underlings, and we went all the way back to the

source of supply, which was in Texas.

It was a racketeering prosecution, which is a little bit more complex than a straightforward drug prosecution or otherwise violent crime prosecution, and I am happy to say that at the end of that prosecution, local law enforcement agreed that the presence of that street gang at that time had been dismantled.

Senator DURBIN. I am hoping that testimony will clearly win

over Chairman Franken. And I yield.

Senator Franken. Thank you, Senator Durblin.

[Laughter.]

Senator Franken. And thank you, Judge Ramos and Judge Jackson and Ms. Darrow, for your testimony. And you are welcome to stay there. We are about to wrap up here, so hang in.

In closing, I want to thank my friend, the Ranking Member, and

I want to thank each of you for your testimony today.

We will hold the record open for 1 week for submission of questions for the nominees and other materials.

This hearing is adjourned.

[Whereupon, at 4:29 p.m., the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Sara L. Darrow

Nominee to be United States District Judge for the Central District of Illinois to the Written Questions of Senator Charles Grassley

1. Other than a very brief time in a small private practice, you have spent your entire career working on criminal matters. If confirmed, how will you prepare yourself to handle the variety of other legal issues that a district judge confronts?

Response: As a federal prosecutor I have a firm grasp of federal rules and procedure. I would build upon my experience and work hard to get up to speed in the different areas of law that come before a district judge. I will utilize the numerous resources available from the Federal Judicial Center and attend continuing legal education courses for district court judges. I will also consult with the other district judges for guidance. Above all, if confirmed, I will work diligently to prepare for the legal and procedural aspects of each case that would come before me.

2. Do you believe that our federal government is one of limited and enumerated powers?

Response: Yes.

3. Do you believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress that it deems unconstitutional? If so, under what circumstances?

Response: Yes. It is appropriate for a federal court to declare all or part of a statute unconstitutional if Congress has exceeded its constitutional authority.

4. What is the most important attribute of a judge, and do you possess it?

Response: I believe that the most important attribute of a judge is an ability to apply the law to the facts in a fair and impartial manner. I believe that I possess that quality.

5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: I believe a judge must treat all who enter the courtroom with dignity and respect, be courteous and patient when considering the arguments presented, and be firm in applying the law to the facts of the case. I believe that I meet each of these standards.

6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In the absence of controlling precedent, I would review decisions from the Supreme Court, the Seventh Circuit, and other federal courts that have addressed an analogous issue. I would also look to the text of any applicable statutes and consider legislative purpose.

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: The role of a district court judge is to apply the law as defined by the Supreme Court or the Court of Appeals to the case presented. I would employ that duty regardless of my own judgments of the merits.

9. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: I would set regular status conferences, enforce reasonable and stringent deadlines, and decide matters expeditiously.

10. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Ycs, judges have an important role in controlling the pace and conduct of litigation. If confirmed, I will work hard to ensure prompt resolution of cases while affording each litigant a full and fair hearing.

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: It is appropriate for a federal court to declare all or part of a statute unconstitutional if Congress has exceeded its constitutional authority.

Please describe with particularity the process by which these questions were answered. Response: I reviewed and carefully considered each question and answer. I discussed some of my responses with a Justice Department representative, finalized my answers, and authorized their communication to the Committee.

13. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Henry F. Floyd Nominee to be United States Circuit Judge for the Fourth Circuit to the Written Questions of Senator Charles Grassley

In your Padilla decision, you discussed your attempt to avoid judicial activism. How
do you define that term?

Response: Judicial activism occurs when judges venture outside of the applicable law and allow other factors, such as personal policy and political preferences, to influence their decisions.

In that case, you discussed "other matters and concerns" which did not appear to be relevant to the case. You also seemed to modify the meaning of the Non-Detention Act by requiring a specific, rather than a general, authorization of detention.

You wrote: "In clear and unambiguous language, the Non-Detention Act forbids any kind of detention of any United States citizen except that which is specifically allowed by Congress." *Padilla*, 389 F. Supp. 2d at 688 (emphasis added). Although you claimed you were applying the plain language of the statute, when you described it, you inserted the words "that which is specifically."

a. Would you consider your discussion of "other matters and concerns" an example of judicial activism? Why or why not?

Response: No, I do not consider this discussion to be an example of judicial activism because I was addressing arguments made by the litigants and not imposing my own policy or political preferences. Under the section of the opinion titled "Other matters and concerns," I addressed compelling arguments contained in the briefs that I had not earlier addressed because they did not fit organizationally. Nevertheless, I thought that it was important that I discuss the arguments so that it was obvious to the litigants and those reviewing my order that I had considered them. Inasmuch as I declared my holding in the sentence immediately preceding this section, and none of what I wrote in this section was a necessary part of the reason for my decision, this section is dicta.

b. Would you consider your description of the statute and your inclusion of the words "that which is specifically," to be an example of judicial activism? Why or why not?

Response: No, I do not consider this discussion to be an example of judicial activism because my statutory interpretation of the Non-Detention Act informed my decision, not my personal preferences. As I stated in *Padilla*, "This Court sits to interpret the law as it is and not as the Court might wish it to be." *Padilla v. Hanft*, 389 F. Supp. 2d 678, 691 (D.S.C. 2005). Section 4001(a) of Title 18 of the United States Code states the following: "No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress."

When I wrote this opinion, it was my judgment that Respondent was asking me to go beyond what the statute allowed. Thus, my inclusion of the term "that which is specifically" to modify "an Act of Congress" was meant to elucidate that I was strictly construing what I interpreted the terms of the statute to be.

3. Do you believe that our federal government is one of limited and enumerated powers?

Response: Yes.

4. What does the concept of separation of powers mean for the federal courts? If confirmed, will this be a governing principle which you will follow?

Response: Federal courts are assigned a circumscribed role in our constitutional structure. Article III limits the power of the federal courts to resolving cases and controversies. The concept of separation of powers reflects this limited role of the federal courts. It requires that federal courts confine their decisions to resolving the narrow issues presented in the cases or controversies before them and not to exercise powers ascribed to another branch. If confirmed, I will follow this governing principle.

5. Do you believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress that it deems unconstitutional? If so, under what circumstances, and applying what factors?

Response: Yes. Judges, however, should presume that acts of Congress are valid and "invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000). In determining whether to strike down a congressional statute as unconstitutional, judges must consider the applicable factors set forth in Supreme Court and other binding precedent.

6. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is independence. Independence allows a judge to resolve cases and controversies impartially and to apply the written law faithfully notwithstanding societal pressures. The independence of the judiciary is critical to the rule of law. I possess independence, which my record as a jurist reflects.

7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: Judges should be calm, patient, courtcous, and respectful in their interactions with all litigants and attorneys. Such temperament is necessary to reflect the impartiality of the court and to allow for the effective resolution of cases. Judges must also exercise great discretion outside of the courtroom to protect society's perception of the judiciary as an independent arbiter of disputes. I meet this standard.

8. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

9. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: If confronted by a case of first impression, my starting point would be the text of the particular statute, regulation, or constitutional provision at issue. If the text is clear, I will simply apply the provision as written. If it is unclear and no binding precedent exists, I will look for guidance from nondispositive Supreme Court and Fourth Circuit precedent and decisions rendered by other circuit courts. The principles and methods gleaned from these decisions will guide me in deciding cases of first impression.

10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: I would faithfully apply all binding precedent regardless of whether I personally disagreed with the decision.

11. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

Response: In the Fourth Circuit, one panel lacks the authority to overturn or depart from the holding of another panel. *United States v. Guglielmi*, 819 F.2d 451, 457 (4th Cir. 1987). Only the court sitting en bane may do so. *Id.* Accordingly, I would decline to overturn or depart from a prior panel's decision unless the court was rehearing the case en bane. Furthermore, I will generally disfavor hearing a case en bane unless "en bane consideration is necessary to secure or maintain uniformity of the court's decisions" or the case involves a "question of exceptional importance." Fed. R. App. P. 35(a).

12. Please describe with particularity the process by which these questions were answered.

Response: I drafted the answers to these questions and asked the U.S. Department of Justice to submit them on my behalf.

13. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Richard B. Jackson Nominee to be United States District Judge for the District of Colorado to the Written Questions of Senator Charles Grassley

- You have participated in two different three-judge panels to determine whether the
 death penalty was appropriate. In both instances, the panel unanimously concluded
 that the death penalty was not appropriate. I recognize that in one of them, People v.
 Page, you criticized the panel's reasoning and said that while the decision is the
 most difficult that a judge has to make, it is "part of our criminal law and it's the
 responsibility of judges to impose the sentence on appropriate cases."
 - a. Is there any doubt in your mind that the death penalty is constitutional?

Response: No.

b. Do you have any personal views that would prevent you from applying the death penalty, if confirmed?

Response: No.

c. In People v. Page, you wrote that although you had felt that "Page deserves the death penalty," you were unable to conclude beyond a reasonable doubt that the death penalty was appropriate. Please explain the reasoning for your conclusion in that case.

Response: The three judges on the panel (the judge who presided during the guilt phase of the trial plus two others, including me, who were randomly selected) agreed that aggravating factors outweighed mitigating factors, making Page eligible for the death penalty. Although all of us concluded that the death penalty was not appropriate in this case, our reasoning in reaching that conclusion diverged. The majority contrasted Page's crime, which was described as an impulsive reaction to his being surprised by the unexpected arrival of the homeowner during a burglary, with prior Colorado death penalty cases, each of which involved premeditation. The majority concluded that, based upon "evolving standards of decency," imposing the death penalty in this case would "lower the bar for executions in the State of Colorado, a precedent that we feel would be inconsistent with what we perceive to be the state-community's disposition to impose the death penalty only in the most egregious and extreme cases." I disagreed and concluded in a concurring opinion that the crime was sufficiently heinous to deserve the death penalty, and that the majority's analysis could effectively create a premeditation requirement for the use of the death penalty.

My conclusion that the death penalty was inappropriate primarily focused on the requirement in Colorado law that death penalty sentencing panels consider factors such as the history and characteristics of the defendant, which led me to consider

whether Page had a brain injury that affected his ability to control impulsive behavior. There was PET scan evidence that a neuroscientist interpreted as indicating such brain damage. As the majority opinion states, "[t]he brain dysfunction testimony raises a reasonable doubt concerning the unimpaired functioning of Mr. Page's brain during the course of the crime." In my concurring opinion, I wrote, "I cannot exclude the possibility, even probability, that prolonged child neglect and abuse, sexual abuse, head injuries, unavailability of supportive parents, and the lack of societal support at critical times, in combination, contributed to the explosion that occurred in Ms. Tuthill's bedroom."

Therefore, because I concluded that I could not find "beyond a reasonable doubt" that the death penalty was appropriate, I concurred in the decision to sentence Page to life in prison without the possibility of parole.

- 2. You received considerable criticism from your community for altering the sentence of a convicted child rapist. Seven months after sentencing the defendant to 10 years in prison, you held another sentencing hearing and changed the sentence to two years in prison and 10 years of probation.
 - Please explain what led you to holding a new hearing seven months after the original sentencing.

Response: Lawyers representing the defendant filed a motion for reconsideration of the sentence under Rule 35(b) of the Colorado Rules of Criminal Procedure.

b. What factors led you to change the sentence?

Response: During my 12 plus years on the bench I would estimate that I have sentenced in the range of 300 to 400 sex offenders, many of whom are serving very long prison sentences, including indeterminate to life sentences. In these cases as in all criminal sentences I consider public safety including the possibility of recidivism as well as the rights and feelings of victims of these crimes and their families.

In this case my decision was based on my concern for community safety and, specifically, what the defendant would be like when he completed his sentence. Charles Brooks was hearing impaired and communicated through sign language interpreters. The motion for reconsideration reported that Brooks would not be placed on the list to receive offender specific treatment in the Department of Corrections because there was no sign language interpreter available to attend the sessions with him. This issue was further developed at the hearing on the motion, and an alternative approach was proposed. The alternative was to incarcerate him in our local jail where it was said he could receive sex offense specific treatment, and if he successfully completed that treatment, he could serve the remainder of his sentence on "Intensive Supervision Probation" with zero tolerance for any

violation. Given the public safety concern about treatment in the Department of Corrections, the fact that Brooks would be in a locked facility for two years and if then released would be under very strict supervision, and the fact that Brooks had no prior sex offenses or any other reported criminal convictions, I believed that this alternative approach was the better one from an overall community safety perspective.

I also believe that the concern motivating my decision was reflected in the findings of Colorado's "Lifetime Supervision of Sex Offenders Act" which became effective five months after Brooks' crime and therefore did not apply to his case but was in effect when he was sentenced. The legislative declaration states:

The general assembly hereby finds that the majority of persons who commit sex offenses, if incarcerated or supervised without treatment, will continue to present a danger to the public when released from incarceration and supervision.

C.R.S. §18-1.3-1001.

Unfortunately, Brooks did not successfully complete the offense specific treatment that he received. He refused to admit significant parts of the crime, which is a requirement for ultimate completion of the program, and he tested positive one time for marijuana. As a result, I promptly re-imposed the 10-year prison sentence and returned him to the Department of Corrections to serve it.

3. Do you believe that our federal government is one of limited and enumerated powers?

Response: Yes. That was the structure of the Constitution and is specifically reinforced in the Tenth Amendment.

4. Do you believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress that it deems unconstitutional? If so, under what circumstances?

Response: Yes. That principal was established in *Marbury v. Madison* and has been a part of our jurisprudence ever since. However, statutes are presumed to be constitutional. They must be interpreted and applied if possible so as to be constitutional. Striking down an act of Congress should be done rarely, narrowly, and only when it is clear based upon existing precedents that the act in part or in whole cannot be construed or applied in a manner that is consistent with the Constitution.

5. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of any judge is a commitment to apply the law, whether statutory or in the form of existing appellate precedent, impartially and fairly, and not to let the judge's personal feelings or desires regarding a result play any role. The rule of law is absolutely fundamental, and I have followed it without fail in my years as a judge. There are several other important attributes of a trial judge: (1) treating people who come before the judge with courtesy and respect; (2) listening with an open mind, and making lawyers and litigants feel that they have been heard; (3) deciding issues promptly; and (4) explaining decisions so that those affected by them understand the judge's reasoning. I have always striven to act according to those qualities in my years as a state court trial judge. I certainly cannot claim perfection, but some of the honors that are listed in my Senate Judiciary Questionnaire perhaps indicate that I have been perceived as having these attributes.

6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A trial judge must recognize that some of the lawyers and most of the non-lawyers who come before him or her are nervous, scared, and of course, worried about the outcome of what may be the most important legal matter in their lives. We also deal with many people who cannot afford attorneys and are trying to represent themselves pro se. A judge must treat all of these people with courtesy, respect and often with patience. The judge's demeanor often means even more to the public than his intelligence and knowledge of the law. There is an expression, "black robe disease," that describes judges who are arrogant, sarcastic, short-tempered, and impatient. I do not have that disease. I cannot claim that I have never been short or impatient with someone. However, I can honestly say that any such lapses have been rare. I believe that I have, and that I am perceived to have, a good judicial temperament. My evaluations by the Judicial Performance Commission in 2000 and 2006 reflect that. I will strive to continue that demeanor and perception if I am confirmed as a federal judge.

7. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

 At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: If the issue involves interpretation of a statute, I would start with the plain language of the statute. If that did not provide a clear answer, I would try to determine from any legislative history that might be available the intent of the drafters of the statute. I would also attempt to find any useful analogy that might guide me to an appropriate interpretation. I would expect the parties, if represented by counsel, to address all these different avenues in their briefs. In the end, I know that my responsibility is to do everything within my power to determine what the intent of the legislative body was and not to make a policy decision.

9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: As a trial judge my responsibility and obligation are to follow the appellate precedents, whether or not I agree with them. There have been occasions during my years on the trial bench when I have questioned in my own mind the results reached by higher courts, but that has never and would never cause me not to follow them.

10. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: The only real answer is to be willing to roll up your sleeves and work hard. During my years on the bench I have done that, and I have instilled in my staff the same attitude. I have listed in response to question 11 a number of specific practices that have helped me to manage my large caseload as a state trial judge. These all are practices that I desired as a trial lawyer, that I have implemented as a judge, and that I have promoted among the 21 trial judges in my courthouse. The First Judicial District of Colorado, of which I am the Chief Judge, was just ranked in Colorado Law Weck (April 11, 2011 cd.) as the "best" of the 22 judicial districts in the State in terms of getting civil cases resolved promptly and sixth best (first among the large metropolitan districts) in getting criminal cases resolved promptly. I am proud of our record, and I will be dedicated to running a similar docket if I am confirmed as a federal judge.

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, particularly in civil cases. Early case management conferences among the lawyers, parties and judge can be a great help in establishing schedules and narrowing

issues, and I will conduct those if I am confirmed as a federal judge. I have always required parties to set a trial date very early in the case, and to stick with it absent extraordinary circumstances, and I will continue to do this. It is very important to decide motions, such as motions to dismiss and motions for summary judgment, promptly. My staff knows this and gets motions to me immediately after they are "ripe" (briefs filed). I have tried to get most motions decided within a couple of weeks after they are brought to my attention. I have been and will continue to be willing to grant dispositive motions such as motions for summary judgment or partial summary judgment when appropriate in order to narrow issues and to reduce unnecessary delay and cost to the parties. For the whole bench to function efficiently, it is important that a judge be willing to cover hearings and trials for other judges when the other judge is overbooked in order to avoid unnecessary delays. Our bench functions that way, and I will bring that attitude with me to the federal bench if I am confirmed. These things can be done without being overbearing, unreasonable or discourteous. I came to the state bench with a background of 26 years as a trial lawyer, and I have a pretty good understanding of what the lawyers and their clients need and want in terms of moving cases forward.

12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: A judge must respect the policy-making role of the legislature. A judge must also assume that a statute that has been enacted by Congress and signed into law by the President was intended to be and likely is constitutional. However, the role of an independent judiciary includes preserving and protecting the Constitution, including finding a statute or part of a statute unconstitutional or unconstitutional as applied. It is a role that must be exercised narrowly and rarely.

Please describe with particularity the process by which these questions were answered.

Response: I drafted my answers, discussed them with officials of the Department of Justice, finalized my answers and requested that they be submitted to the Senate Judiciary Committee.

14. Do these answers reflect your true and personal views?

Response: Yes.

Senator Chuck Grassley Questions for the Record

Lisa O. Monaco, Nominee to be Assistant Attorney General (National Security)

 Please provide the Committee with detail on the positions you have held within the Department of Justice and how they qualify you to be an Assistant Attorney General as head of the National Security Division.

Throughout the positions I have held at the Department of Justice, first as a line prosecutor and later during my time at the Federal Bureau of Investigation (FBI), I have gained national security experience from both an operational and prosecutorial perspective. As an Assistant United States Attorney (AUSA), I learned the value of rigorous analysis and legal argument and how to build and prosecute an effective criminal case. Since 2006, I have devoted the vast majority of my time to working on national security issues, first at the FBI, as Special Counsel and then as Chief of Staff to the Director, and later at the Deputy Attorney General's Office as an Associate Deputy Attorney General and then as the Principal Associate Deputy Attorney General. I have developed expertise in the area of national security by working on intelligence investigations, national security-related and other criminal investigations and prosecutions, and other legal, operational and policy challenges relating to the Department's national security mission.

At the FBI, I provided advice and guidance to Director Mueller on a range of national security matters and worked with the FBI's leadership team to develop the FBI's National Security Branch and to further the integration of intelligence across all facets of that organization. I helped manage the Bureau's national security assets and worked to advance the FBI's transformation from a law enforcement agency to a national security organization focused on preventing terrorist attacks. Among other things, I gained an understanding of and appreciation for, the FBI's national security program and operations, the Bureau's role as an element of the intelligence community, and the importance of FISA as an intelligence collection tool from which the whole intelligence community benefits. During my tenure at the FBI, I gained firsthand experience working within the Intelligence Community to understand the role that effective and coordinated intelligence operations play in safeguarding our nation's security.

In the Deputy Attorney General's Office, I have helped to supervise the national security functions of the Department, including the National Security Division (NSD), United States Attorneys Offices, the FBI and components of the Drug Enforcement Administration. I have worked with partners in the intelligence community and in the interagency process and have developed an understanding of the national security architecture of the federal government. In my career working with agents, analysts and lawyers across the government I have developed an appreciation of the challenges confronting national security professionals and prosecutors as they pursue their mission of developing intelligence, sharing information, and working together to disrupt national security threats and protect the nation. As a result of all these experiences, I have gained a

broader understanding of the range and complexity of national security issues confronting the Department's components and United States Attorneys Offices as well as the importance of striking the appropriate balance of intelligence community equities, legal requirements and prosecutorial interests.

As a lawyer as well as a national security official, I have a keen appreciation of the significant threats we face as a nation and the importance of effectively addressing those challenges in a manner that promotes the nation's security while also preserving our fundamental rights and liberties. I understand the importance of using all tools in order to combat the national security threats we face and of doing so consistent with statute, executive order, relevant regulations, and the Constitution. Drawing on my experience as a prosecutor as well as the perspective I have gained at the FBI and with the Department of Justice working on the operational aspects of national security investigations, I will exercise independent judgment in managing the Department's national security functions while ensuring that the Division's activities are properly coordinated with the nation's other national security activities when appropriate. I will do the same in providing advice to and advancing partnerships with the Division's partners within the intelligence community and in working cooperatively with congressional oversight committees.

- 2. At your hearing, I asked if you agreed with the sentiment that because there is not an enemy state against which such a war can be waged, the very notion of a "war" on terror is at best a public relations expression. In the alternative, I asked if you believed the United States is engaged in a war on terror. You replied "I believe we are at war and I believe we are at war against determined enemy and a very adaptable enemy, and that's been my experience in the time that I've served in the FBI and in the department."
 - a. With whom do you believe we are at war?

Pursuant to the Authorization for the Use of Military Force enacted by the Congress in September 2001, the United States is engaged in hostilities with Al Qaeda, the Taliban and associated forces.

b. Why do you describe the enemy as an "adaptable enemy?"

I describe them as an adaptable enemy because over time, and as has become publicly known, Al Qaeda and those who are inspired by it, have evidenced evolving tactics in their recruitment, planning, operations, and operational security. Throughout this time, the threat environment has become increasingly complex, encompassing terrorist plots, espionage, and sophisticated cyber intrusions from state and non-state actors.

c. If confirmed as Assistant Attorney General, what will you do to support this war and to respond to adaptations made by the enemy? If confirmed as Assistant Attorney General for National Security, I will work to ensure that agents, analysts, and prosecutors share information and use all lawful tools to detect national security threats mindful of the need to ensure that our tools keep pace with the threat we face and that they are used in a manner consistent with the rule of law. Among other things, the Assistant Attorney General for National Security has the responsibility, pursuant to designation from the Attorney General, to approve applications to the Foreign Intelligence Surveillance Court and to approve the use of information from FISA warrants in criminal and other contexts. If confirmed, I will lend my support, and legal guidance to these and other efforts to ensure that the advances achieved through authorities like the PATRIOT Act, the FISA Amendments Act and other tools are not diminished. My guideposts in this regard will be to ensure clarity, stability and flexibility for agents and operators in the field and the prosecutors who work with them consistent with the laws and the Constitution.

3. In a talk you gave to a class at American University you recommended two books for the class to read. One of these books was *Terror and Consent* by Professor Phillip Bobbitt. In the introduction to his book, Professor Bobbitt writes: "Among well-informed persons, a number of dubious propositions about twenty-first century terrorism and the Wars against Terror are widely and tenaciously held." He then lists a number of the assumptions he believes are dubious. I am interested in knowing your views on several of these assumptions. Please respond to the following questions:

In my remarks to a group of undergraduate students in an International Affairs class at the American University I referred to two books that had recently been released: <u>Terror and Consent</u>, by Phillip Bobbitt; and <u>Law and the Long War</u>, by Benjamin Wittes. I have not reread either book but my recollection is that I mentioned these books in order to encourage a group of college students interested in international and current affairs to seek out and expose themselves to a range of approaches — historical and analytical — to the complex issues of terrorism and security.

a. Do you believe "that because terrorism will always be with us, there can be no victory in the war against terror"?

I have not reviewed the portions referenced above but, as a general matter, I understand that there have been examples of terrorist movements throughout history, including of course the goal of al Qaeda to establish a global Islamic caliphate. Although the war on terror is not likely to end like past wars that does not mean that terrorist movements cannot be disrupted and degraded. Since September 11, 2001, the United States has made substantial progress in addressing the threat posed by al Qaeda, the Taliban and associated forces. The leadership and operational capabilities

of al Qaeda have been degraded and it should be our goal to continue to apply all instruments of national power to detect, deter and disrupt the terrorist threat.

b. Do you believe "that because terrorism is only a means to an end... 'one man's terrorist is another man's freedom fighter'"?

I have not reviewed the portion referenced above or the context in which it appears, but as a general matter, I believe terrorism can fairly be described as the use of violence and assassination to intimidate governments and civilian populations and that terrorists or terrorist organizations are so designated because they engage in terrorist activity or threaten the security of United States nationals or the security of the United States. I do not believe that violence or assassination to intimidate civilian populations should be justified as a "freedom fight."

c. Do you believe "that terrorism is best treated as a problem of crime, by law enforcement officials, and not as a matter for defense departments, which are inappropriate when there are no battlefield lines or armies to confront..."?

I have not reviewed the portion referenced above or the context in which it appears, hut as a general matter, I believe that we must bring to bear all instruments of national power against the terrorist threat and use whatever tool works best—military, intelligence, prosecution (military or civilian), diplomatic—in order to disrupt and incapacitate a particular threat. Sometimes that tool will be law enforcement and the criminal justice system, sometimes that tool will be a military prosecution, sometimes that tool will be the use of military or intelligence assets.

d. Do you believe "that terrorists 'win' if they are able to force government to enhance their power of detention, surveillance, and information collection or if the citizenry significantly modifies its everyday behavior"?

I have not reviewed the portion referenced above or the context in which it arises, but as a general matter, I do not believe terrorists "win" in these circumstances. I believe that we must ensure that we use all lawful means to disrupt national security threats and we must do so consistent with the Constitution and the laws of the United States. If confirmed, my priority will be to ensure that if there are new tools that can be brought to bear that are consistent with the Constitution, we explore them and work with Congress to ensure that those on the front lines have the tools they need.

e. Do you believe "that the root causes of terrorism lie in conditions of poverty, economic exploitation, neglect of health and education, and religious indoctrination that must be reversed before a war against terrorism can be won?"

I have not reviewed the portion referenced above or the context in which it appears, but it seems reasonable to me that a number of the factors could contribute to a particular terrorist threat or movement.

- In all of the outlines you provided the Committee on talks you have given on national security issues you include a section concerning "balancing national security and civil liberties."
 - a. Do you believe that an appropriate balance has been struck between national security concerns and civil liberties?

Agents, analysts and prosecutors who work every day to protect us from national security threats do so pursuant to the authorities Congress has given them under the Constitution. I believe these authorities reflect an effort to strike a balance between the imperative of protecting national security interests of the United States on the one hand and the importance of doing so consistent with the fundamental rights guaranteed under the Constitution. Through carefully crafted authorities, compliance efforts within the Executive Branch and robust Congressional oversight of those compliance efforts, I believe we have been able to strike the right balance over time. As the threat continues to evolve, and technology develops that better enables us to detect and disrupt threats while at the same time providing new tactics and capabilities to those who would do us harm, we must be constantly vigilant in our efforts to maintain that balance.

b. What, if any, reforms do you think are necessary for the protection of privacy and civil liberties?

As noted above, as a general matter I believe we have been able to strike a balance over time in protecting security and guarding the privacy and civil liberties of the American people. As the threat continues to evolve, and as technology develops that better enables us to detect and disrupt threats while also providing new tactics and tools to those who would do us harm, I believe it is important that Congress and the Executive Branch continue to be vigilant in working together to develop tools that enable us to keep pace with the threat while ensuring that that balance is maintained.

5. At your hearing, I asked you about the 1995 Gorelick memo which established a wall between the criminal investigators and the intelligence community. I specifically asked whether or not you were involved in any subsequent review, revision or implementation of the memo. You replied that you didn't believe so, but would give that question more thought. Do you have anything to add to the response you gave at your hearing?

No.

6. At your hearing, I asked if you support the <u>permanent</u> extension of PATRIOT Act provisions which are soon to expire – the "lone wolf" provision, the roving wiretaps provision, and the business records provision. You responded that you "think we need to have those provisions reauthorized for a <u>substantial period of time</u> in order to give stability and clarity to our agents in the field who need those tools quite essentially." Do you disagree with FBI Director Mueller's testimony that these should be permanent?

In my testimony I intended to convey the critical importance to the nation's national security efforts of the PATRIOT Act reforms and, in particular, the need to reauthorize for a substantial period the three provisions currently set to expire next month. I understand and agree with Director Mueller's desire to provide the agents of the FBI with clarity and stability in the tools they use through a permanent reauthorization of these critical tools. If Congress determines that it should revisit these authorities, and if I am confirmed as the Assistant Attorney General for National Security, I will work with Congress to ensure that the operators charged with detecting and disrupting threats have the tools they need to do so consistent with the rule of law.

7. You worked for the FBI for years, providing advice and making decisions on national security issues. Have the three provisions referenced above (lone wolf, roving wiretaps, business records) been useful to the FBI to prevent terrorist attacks in the United States? Please explain how you would use these tools if confirmed as an Assistant Attorney General.

Based on my experience, the three expiring provisions are critical tools that have given national security investigators many of the same capabilities that have long been available to criminal investigators. For instance, the roving wire tap provision has permitted investigators to track spies and terrorists who are trying to evade surveillance and the business record provision has permitted investigators access to key documents and data in national security, espionage and terrorism cases. The lone wolf provision, although not used to date, permits investigators to keep up with the growing threat of the lone or self-radicalized offender. If I am confirmed, my job would be to ensure that these tools are used aggressively and appropriately — and with full court review and approval. If confirmed, I would have the responsibility of approving, pursuant to Attorney General designation, applications to the Foreign Intelligence Surveillance Court, including applications for the use of these and other tools.

8. If these three provisions are not reauthorized, or if they are substantially weakened by including new requirements, what would be the consequence for agents in the field? What would be the general effect on national security investigations?

If these provisions are not reauthorized or are substantially weakened, agents in the field would be deprived of vital investigative tools, and their efforts to detect terror threats and

ferret out espionage actors and to protect the national security would be impeded. This would have a potentially devastating effect on national security investigations.

- Three other tools which are not set to expire and do not need reauthorization are the Foreign Intelligence Surveillance Act (FISA) pen register and trap-and-trace orders, national security letters, and delayed notice search warrants.
 - a. The FBI regularly uses pen register and trap-and-trace authority in both national security and criminal areas. Do you believe increased legal burdens to obtain these investigative tools are needed?
 - I do not believe there is a need to increase the legal burdens to use these tools. I would want to ensure that any changes to the legal standards governing the use of this authority not adversely affect its operational effectiveness.
 - b. Legislation has been introduced that would increase the legal standard for FISA pen registers, while keeping the criminal legal standard lower. Do you support increasing the legal standard for national security pen registers while keeping the criminal standard unchanged?
 - I have not reviewed any specific legislative proposal in this regard, but as a general matter, I would be concerned about any effort to increase the legal standard on the use of the FISA pen register tool. I would want to ensure that any changes did not adversely affect its operational effectiveness and would want to consult with agents and operators in that regard. This tool is utilized with full court authority and approval to establish non-content information in order to demonstrate probable cause for other more intrusive investigative steps where warranted.
 - c. If the legal standards are modified, to make FISA pen registers more difficult to obtain than criminal pen registers, would this create incentive for law enforcement to use a criminal pen registers and not FISA pen registers?
 - Increasing the standard for obtaining FISA pen registers could conceivably increase the likelihood that investigators would use criminal pen registers instead.
 - d. Please describe your view on the use of National Security Letters as part of the building blocks of a national security investigation.

National Security Letters are essential to many national security investigations. They are used to obtain transactional and subscriber information – not content – in order to permit national security investigators to identify threats and, as importantly, to rule out potential threats thereby conserving and focusing investigative and agent resources. Important reforms have been put in place in recent years – both at the FBI and within the Department of Justice — to review and monitor the use of NSLs, to ensure the proper predication exists and is documented, and to report to Congress on their use. These reforms have strengthened this vital national security tool.

e. What is your view on imposing a sunset on National Security Letters?

NSLs have never had a sunset requirement; I do not believe a sunset is necessary for the reasons described above. Should Congress decide to impose a sunset, and if I am confirmed, I would want to work with Congress to ensure that agents and prosecutors continue to have this vital national security tool and that it is used consistent with the laws of the United States.

Please describe your view on the use of Delayed Notice Search Warrants as a national security tool.

Delayed notice search warrants are an important national security tool. As in the criminal context, they can be used when it is important to maintain operational security and secrecy regarding a particular investigative step. This can be particularly important when the target of the investigation or search is a terrorist suspect, foreign intelligence officer or spy.

g. Is there any necessity for, or advantage to be obtained, in decreasing the delay period for Delayed Notice Search Warrants?

I am not aware of any necessity or advantage to investigators to decreasing the period of delay in the use of this tool. As I understand it, when seeking authority for a delayed notice search warrant, the government must make a showing to the court to establish the necessity for a particular period of delay permitted within the statute. The court has the discretion to grant that request or to grant a period of delay that is less than the maximum allowable period permitted by statute.

- 10. Regarding the Electronic Communications Protection Aet (ECPA) the Digital Due Process Coalition supports a probable cause standard for obtaining all electronic communications, regardless of its age, the location or storage facility, or the provider's access to the information.
 - a. Do you support raising the legal standard for obtaining electronic communications to a "probable cause" determination?

I have not reviewed any particular legislative proposal in this regard, but speaking generally, I would be concerned with an increase in the legal standard for obtaining electronic communications and would want to ensure that any change not adversely affect operational effectiveness. As noted above, NSLs (some of which are issued under ECPA) form the building blocks of national security investigations under a relevance standard. This is vital to the ability of national security investigators to obtain information that forms the basis for probable cause and to further national security investigations.

b. Do you believe the legal standard to obtain information through a pen register or trap-and-trace order should be increased to probable cause or 2703(d) standard?

No, for the reasons described above.

- 11. With the advancement of technology, the gap is widening between what the courts authorize under the Communications Assistance for Law Enforcement Act and what communications companies are capable of providing.
 - Please comment on your understanding of the gap between capability and current legal authority.

Based on my experience working with law enforcement and the intelligence community for the last several years, my understanding is that the advance of technology has created a gap between law enforcement's ability to access and obtain information to which it is legally entitled and the information it is technically able to obtain. This gap has impeded investigators' ability to obtain information to which they are entitled pursuant to court order and has slowed national security investigations.

b. Would you agree that the Communications Assistance for Law Enforcement Act needs updating?

I agree that Congress and the Executive Branch should work together to ensure that investigators can effectuate the authority given to them by Congress and the courts. Whether that takes the form of updates to the Communications Assistance for Law Enforcement Act (CALEA) or another mechanism, if I am confirmed I will make it a priority to work with Congress in this regard.

c. If Congress does <u>not</u> pass a law requiring corporate compliance, what will happen to the ability to collect what a judge has ordered them to get? If the increasing inability to effectuate current legal authorities is not addressed, and as technology advances, law enforcement will likely continue to lose the ability to access information to which a court has granted to them lawful access. This will pose further challenges for law enforcement and national security investigators and make it more difficult to detect, deter and disrupt threats.

d. Are you concerned about the possibility of law enforcement "going dark?" How would "going dark" affect terrorism investigations?

For the reasons described above, as a former federal prosecutor and as a national security professional, I am concerned about the inability of law enforcement and national security investigators to access information to which a court has granted them lawful access. This problem has been described as the "going dark" problem. As terrorists and spies increasingly use new modes of communication there is greater risk that national security investigators will not be able to access critical pieces of information to prevent terrorist attacks despite having legal authority to obtain such information.

e. If confirmed, will you work with Congress to find a legislative solution to this problem?

If I am confirmed, I will welcome the opportunity to work with Congress to identify solutions to this critical national security problem.

- 12. You previously worked as Counsel and Chief-of-Staff to the FBI Director. The FBI was recently criticized by the Homeland Security and Government Reform Committee, (HSGAC) in a committee report addressing the lessons learned from the Fort Hood shootings by Major Nidal Hasan. The report recommended that the FBI "more convincingly share information and coordinate operations with other federal, state, and local agencies."
 - a. If you received information that the FBI is not sharing information with federal prosecutors, what is the responsibility of the National Security Division Assistant Attorney General? What would you do to fix the problem?

The responsibility of the Assistant Attorney General (AAG) for National Security is to ensure a coordinated approach to national security investigations working with the FBI, United States Attorneys Offices, and the intelligence community. As AAG, I would work to continue the strong partnerships between the FBI and the National Security Division (NSD) and to maintain cooperative relationships now realized by agents, analysts, and prosecutors working side-by-side on investigations. NSD was created to ensure that criminal investigators and prosecutors on the one hand, and

intelligence lawyers and the intelligence community on the other, have the same information about the same terrorists and intelligence targets. If I identified an instance where information that should be shared was not being shared, I would work diligently to break down whatever barrier was impeding that communication and put in place a system to ensure that problem did not recur.

b. As the Assistant Attorney General, will you have any problem separating yourself from the FBI, given your previous affiliation with that agency, and holding them accountable when needed?

No. If I am confirmed as the Assistant Attorney General for National Security, it will be part of my responsibility to provide oversight of intelligence, counterintelligence, and national security matters at the FBI to ensure conformity with applicable laws and regulations. My experience at the FBI will be an asset in my ability to do so as it will enable me to ask the right questions, probe the answers provided, and to work productively, efficiently and professionally to find and implement solutions to whatever issues and problems arise.

c. The 9/11 Commission discussed information-sharing as a key problem in failing to "connect the dots". In fact, they pointed out that the acting head of the Office of Intelligence Policy and Review complained to the Attorney General about the lack of information-sharing controls. As a result, he began imposing his own information-sharing procedures on Foreign Intelligence Surveillance Act (FISA) material. What protections are in place at the National Security Division to prevent this from happening again?

There are structural and procedural protections in place at the National Security Division (NSD) to ensure robust information sharing. First, the structure of the NSD is one way in which the Department's and the government's national security architecture ensure information sharing. Congress created the NSD in order to bring the Department's national security functions under one roof and under one senior official reporting to the Deputy Attorney General and the Attorney General. In creating NSD and the position of the Assistant Attorney General for National Security, Congress ensured that there would be one place where both law enforcement investigators and intelligence lawyers could share and synthesize information. Today, national security investigators, intelligence lawyers, and prosecutors sit together, share information, expertise and perspective, and focus together on national security targets. Finally, the oversight responsibilities of the NSD - including national security reviews conducted by NSD lawyers along with lawyers from the FBI's Office of General Counsel, and review by NSD of regular reporting regarding FBI's national security investigations -- provide a check on the use of these authorities and an ability to identify and correct deficiencies in information sharing.

13. While you served as Associate Deputy Attorney General, were you involved in the Justice Department's decision in November 2009 to try 9/11 mastermind Khalid Sheikh Mohammed and four co-conspirators in Article III courts? Did you agree with that decision?

I was among a group of lawyers who participated in discussions regarding the disposition of the 9/11 conspirators. As the Attorney General said, he made his decision after considering carefully the full case presented to him by career prosecutors and after consulting with the Department of Defense. The Attorney General has also said that the 9/11 attacks were both an act of war and federal criminal violations and that his was a difficult decision on which reasonable persons could differ. I agree that it was a close call and that it is appropriate for the Attorney General to make such decisions. The Attorney General has now decided to refer the case to the military commissions in order to hold the 9/11 attackers accountable. If confirmed, my priority will be to assist the Department of Defense and the military commission proceeding to ensure that the 9/11 attackers are held accountable.

- 14. At your hearing we discussed the Attorney General's policy reversal regarding trying terrorists in military court. Specifically, I noted that although it was his opinion that the best venue for prosecution of terrorists was in federal court, he made a decision to try terrorists in a military court. He noted that he made his decision only because Congress forced him to do so. You indicated you agreed with the Attorney General's decision to try terrorists in a military tribunal.
 - a. Do you have any doubts that military tribunals can be a successful tool in the prosecution of terrorists?

The military commissions system, as reformed through the Military Commissions Act of 2009, is an important tool in the effort to incapacitate terrorists and I have confidence the commissions can be used successfully to prosecute terrorists.

b. Do you have any doubts about the constitutionality of military tribunals?

The Military Commissions system, as reformed by the Military Commissions Act of 2009, provides many of the same safeguards and protections that Americans associate with protections afforded for fair trials in the criminal justice system; I have no reason to doubt its constitutionality.

15. I also asked if you agreed with his <u>opinion</u> that the best venue for prosecution is in federal court and that Congress forced him to do otherwise. I do not believe you provided a clear answer to this question. Do you agree with the Attorney General that the best venue for prosecution of terrorists is in federal court rather than before military tribunals?

I agree with the Attorney General that both federal courts and military commissions are critical tools. As the President and the Attorney General have said, federal courts have proven over many years to be one of the most effective tools in the detention and incapacitation of terrorists and military commissions are also an important tool in combating terrorists and the threat they pose. As I indicated in my opening statement, we must ensure that we can use all tools to disrupt terrorist threats. In some cases the most effective tool may be prosecution in the criminal justice system while at other times it may be the use of military commissions, and in still other instances the use of military, intelligence or diplomatic assets may be the best method by which to incapacitate a particular terrorist threat.

- 16. In Attorney General Holder's public statement on this issue, he criticized Congress for encroaching on the "responsibility of the executive branch" and warned that it "could have serious ramifications" to our national security.
 - a. Do you agree with the Attorney General that Congress inappropriately interfered with the executive branch?

I believe that Congress has an important role in both the authorization and oversight of the national security activities of the Executive Branch. As the President, the Attorney General and the Secretary of Defense have all indicated, the exercise of prosecutorial discretion has always been an Executive Branch function. I recognize that it is important to balance the roles of the respective branches in exercising national security responsibilities.

b. What oversight role does Congress have with regard to executive branch decisions concerning national security?

I believe the Congress plays a unique and important role in oversight and authorization of the Executive Branch's national security activities. Under the National Security Act, Congress must be kept fully and currently informed of significant intelligence activities and has the responsibility to exercise appropriate oversight of the Executive's national security activities.

c. If confirmed, will you cooperate with the Congress and its Committees in the exercise of its oversight responsibilities?

Yes.

17. The President, commenting on the decision to try the 9/11 co-conspirators in military tribunals instead of in Article III courts, stated: "To treat these folks as profoundly

different than the run-of-the-mill murderer or rapist is wrong in one respect - it elevates them." Do you agree with the President that subjecting terrorists to military tribunals elevates them?

I am not familiar with this statement or the context in which it was made. I understand that there are many deeply held and principled views regarding the choice of forum in which to prosecute the 9/11 attackers. I also understand that all seem to agree on the need to hold the 9/11 attackers accountable. I believe that the attacks of 9/11 were both an act of war and criminal violations and that it is appropriate to hold the 9/11 attackers accountable in military commissions.

18. Please describe with particularity the process by which these questions were answered.

I received these questions from the Office of Legislative Affairs on April 20, 2011. I then completed a draft of these answers and discussed them with colleagues within the Department of Justice. I then finalized my answers and authorized their transmission to the Committee.

19. Do these answers reflect your true and personal views?

Yes.

Responses of Nelva Gonzales Ramos Nominee to be United States District Judge for the Southern District of Texas to the Written Questions of Senator Charles Grassley

1. Do you believe that our federal government is one of limited and enumerated powers?

Response: Yes.

2. Do you believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress that it deems unconstitutional? If so, under what circumstances?

Response: Yes. It is proper for a judge to strike down an act of Congress when Congress enacts a law that is contrary to the Constitution or when Congress enacts a law that exceeds its authority under the Constitution. In determining whether an act of Congress is unconstitutional, I would follow Supreme Court and 5th Circuit precedent.

3. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is a firm commitment to the rule of law. I possess this attribute.

4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: The appropriate temperament of a judge includes the qualities of impartiality, fairness, patience, courtesy, and respect for everyone who comes before the court. The most important elements of judicial temperament are impartiality and respect. I meet this standard.

5. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

6. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In matters concerning statutory interpretation, I would first look to the text of the statute. If the text is not clear, I would review the legislative purpose in enacting the statute. If an ambiguity remained, I would look to analogous precedent from the Supreme Court and the 5th Circuit.

In matters concerning the Constitution, I would first look to the text of the Constitution. If the text is not clear, I would look to analogous precedent from the Supreme Court and the 5th Circuit.

7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: I would be bound by precedent so I would apply the decision.

8. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: If confirmed as a district judge, I would manage my caseload by setting and enforcing reasonable deadlines for discovery, motions, and trials. I would rule on motions promptly and resolve cases as efficiently as possible. I would also utilize the assistance of the Magistrate Judges as appropriate.

9. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. I believe that judges have a significant role in controlling the pace and conduct of litigation. If confirmed as a district judge, I would take the steps outlined in response to Question 8 to control my docket.

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: It is appropriate for a court to declare a statute enacted by Congress unconstitutional when the statute contravenes the Constitution or when Congress has exceeded its constitutional authority in cnacting the statute. In determining whether a statute is unconstitutional, I would follow Supreme Court and 5th Circuit precedent.

 Please describe with particularity the process by which these questions were answered. Response: I reviewed the questions and prepared my responses. I discussed my responses with a Department of Justice official. I then finalized my responses and forwarded them to the Department of Justice for submission to the Senate Judiciary Committee.

12. Do these answers reflect your true and personal views?

Response: Yes.

SUBMISSIONS FOR THE RECORD

Senator Patrick Leahy, Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washing ton DC 20510

Re: Chief Judge Brooke Jackson

Finding experience, an excellent knowledge of the law, a calm demeanor, and an absolutely unbiased approach to issues in a person to serve on the Federal Bench is a difficult task. I would recommend our District Chief Judge Brooke Jackson as he definitely fits these stated requirements. It is my understanding that he has been nominated and is now awaiting confirmation.

My association with Judge Brooke Jackson began when I was serving in the State House of Representatives. Judge Jackson is the Chief District Judge in the Judicial District in which I reside. For background purposes, I served in the Colorado State House for 19 years and was the Majority Leader for a period of time. I also serve on the Judiciary Committee. As you know, the General Assembly writes many laws and it is the Judiciary who has the task of interpreting and applying those laws fairly and correctly. Judge Jackson was always available to assist me on thinking through the many legal issues we confronted. I found the Judge to be the most effective and forthright person to work with in finding viable solutions.

Then in March of 2008, Senator Ken Salazar asked me to serve on a Commission to aid in the selection of a person to be appointed to fill a vacancy on the U.S. District Court. Judge Jackson was one of the applicants which I had the good fortune of interviewing and learned more of his background. You should know he was a unanimous choice.

Judge Jackson is highly respected in our community. He is known for his demeanor, his strict enforcement of the law, and his leadership. When he was appointed Chief Judge, he had to create order and fairness to our Judicial District which he did successfully. I highly recommend him for the position for which he has been nominated. The experiences I have had working and knowing Judge Brooke Jackson's capabilities, I have never found any negatives.

Sincerely,

Norma V. Anderson Senator, retired 2622 South Iris Street Lakewood, CO 80227

Phone: 303-986-0397

H. GREGORY AUSTIN 301 HIGH STREET DENVER, COLORADO 80218

Home Telephone: 303-722-2227 Home Facsimile: 303-722-9009 Home E-Mail: gdsra@hotmailcom

Office Telephone: 303-295-8176 Office Facsimile: 303-672-0359 Office E-Mail: gaustin@hollandhart.com

March 18, 2011

The Honorable Patrick Leahy, Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chuck Grassley, Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Re: R. Brooke Jackson, nominee for judicial appointment

Dear Chairman Leahy and Senator Grassley:

It is my pleasure to write in support of R. Brooke Jackson, nominated by President Obama for appointment to the United States District Court for the District of Colorado. That nomination awaits a hearing before your committee.

Brooke and I were colleagues at Holland & Hart LLP, a Rocky Mountain regional law firm headquartered in Denver, for more than 25 years, so I can claim to know him very well. By way of full disclosure, I am a Republican and served under Presidents Nixon and Ford as General Counsel to the Small Business Administration and Solicitor of the Department of Interior.

Brooke was an exceptionally highly regarded partner at Holland & Hart, based upon his superior intellect, professional skills, the leadership roles he assumed, and his temperament and collegiality.

At Holland & Hart, Brooke's clients were primarily business, so he fully understands the businessman's perspective. At the same time, he consistently demonstrated a public spirit. His willingness to leave a partnership in a prominent law

The Honorable Patrick Leahy
The Honorable Chuck Grassley

March 18, 2011 page 2

firm to serve on the Colorado bench demonstrated his desire to do public service. On the bench, he has earned a fine reputation for fairness, toughness and judicial temperament.

Brooke would be an outstanding federal judge, and I urge your committee to hear his nomination as promptly as possible.

Very truly yours,

tony thany yourts,

I Fregory austin

BEATTY & WOZNIAK, P.C.

District to Woman, 1.0.			
MICHAEL L. BEATTY DIRECT: (303) 407-4490 E-MAIL: MBEATTY@BWENERG	MAR38111PN 4:15	Attorneys at Law 216 Sixteenth Street, Suite 1100 Denver, Colorado 80202-5115 Telephone (303) 407-4499 Facsimile (303) 407-4494 www.bwenergylaw.com	CASPER CHEYENNE DERVER SALT LAKE CITY SANTA FE

March 21, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510 The Honorable Chuck Grassley Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Re: Nomination of Brooke Jackson

Honorable Leahy and Grassley:

I have known Brooke Jackson since our days as undergraduate intercollegiate debaters on competing teams. I was his classmate at Harvard Law School and have followed his career as an attorney and as a state district judge. Thus, not only do I know him both personally and professionally, I have watched his growth and development as an attorney, a judge and an individual. There is no one for whom I have greater respect than Brooke. He is knowledgeable, fair, honest, and judicious. He knows when justice demands that truth be tempered with mercy and when it must be tempered with firmness and toughness. He does not hesitate to rule and invariably makes the right call based on the evidence and the controlling authority.

Brooke Jackson exemplifies the principles that best define our American system of justice and he would be a great addition to the federal judiciary. I give him my highest endorsement and recommendation.

Very truly yours,

MLB/gkb ...

Energy in the Law^a Operating in Wyoming as Beatty, Womiak & Reese

April 5, 2011

The Honorable Patrick Leahy Chairman Senate Judiciary Committee 437 Russell Senate Building Washington, DC 20510

The Honorable Chuck Grassley Ranking Member Senate Judiciary Committee 135 Hart Senate Office Building Washington, DC 20510

Dear Chairman Leahy, Ranking Member Grassley, and Members of the Senate Judiciary Committee,

As a career national security professional and former Assistant Director of the FBI's Counterterrorism Division, I write in strong support of the nomination of Lisa Monaco for Assistant Attorney General for National Security, Department of Justice.

I had the good fortune to work directly with Lisa Monaco while serving as an FBI executive. Lisa is exceptionally well qualified to serve in the capacity of Assistant Attorney General for National Security, and would bring to the position a keen and unique insight for the nuance of national security matters. During the time I spent working directly with Lisa, I observed first hand her absolute dedication to the fight to protect our national security. The creation of the NSD was a critical reform of the Department of Justice, which was of course enacted through the help of this committee. The NSD has subsequently evolved to play a significant role to protect our nation from a continuing barrage of national security threats.

The successful leadership at the NSD is more important than ever to protect us from those national security threats. I believe from personal observation that Lisa's combination of prosecutorial and operational experience gained throughout her career in the Department of Justice exceptionally suits her to lead the Division. Her experience also contributes to her understanding of how agents, intelligence analysts and prosecutors work together to detect, deter and disrupt national security threats. In a prior role I served as Special Agent in Charge of the FBI National Security Division in New York City. It was here that I learned the tremendous importance prosecutors make working together directly with and alongside investigators. Lisa Monaco understands this integration, and its synergy with intelligence gathering and the rule of law, and I believe she will excel in the position of Assistant Attorney General if confirmed. She has my highest recommendation and support.

Sincerely,

Joseph Billy, Jr.



City of Wheat Ridge Municipal Building 7500 W. 29th Avc. Wheat Ridge, CO 80033-8001 P: 303.237.2220 F: 303.235.2949

Daniel Brennan Chief of Police

April 8, 2011

The Honorable Patrick Leahy Chairman, Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chuck Grassley, Ranking Member, Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Re: R. Brooke Jackson, Nominee for the U.S. District Court Bench in Colorado

Dear Chairman Leahy and Senator Grassley:

I am writing to encourage the Judiciary Committee to support President Obama's nomination of R. Brooke Jackson to the United States District Court for the District of Colorado. Brooke is an exceptional jurist and lawyer in Colorado who would make be an exceptional addition as a federal court judge.

As a law enforcement professional in Jefferson County, Colorado, I have known Brooke Jackson for many years as the Chief Judge of the First Judicial District and as Chairman for the Jefferson County Criminal Justice Strategic Planning Committee. The members of my police department and I have found Brooke Jackson to a very intelligent lawyer and jurist, as well as an exceptional communicator and a patient listener. My colleagues in law enforcement and the criminal justice system in Jefferson County have found Brooke Jackson to be supportive of law enforcement and criminal justice issues. He is fair, thoughtful and consistently demonstrates the ability to ask the tough questions when needed. He applies the law without bias.

In summary, I consider Brooke Jackson highly qualified for the federal bench and urge you to move his nomination forward promptly.

Sincerely

Daniel G. Brennan Chief of Police

www.ci.wheatridge.co.us

April 4, 2011

The Honorable Patrick J. Leahy, Chairman
The Honorable Charles W. Grassley, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

We write in strong support of the nomination of Lisa Monaco to serve as the Assistant Attorney General of the National Security Division.

We have all personally worked with Lisa Monaco during our respective tenures with the Department of Justice. We know her to be a first-rate lawyer with great integrity and impeccable judgment. She is forthright, hard working, and unwavering in her dedication to the mission of the Department and to the rule of law.

Lisa Monaco's broad range of substantive experience within the Department—as an Assistant United States Attorney in the District of Columbia, as Chief of Staff to the Director of the Federal Bureau of Investigation, as the Associate Deputy Attorney General with responsibility for national security, and as the Principal Associate Deputy Attorney General—make her an ideal candidate for this critical position.

We believe that, if confirmed, Lisa Monaco will serve our nation with distinction. We are pleased to commend her to you without reservation.

Sincerely,

Benton J. Campbell Former Interim United States Attorney, Eastern District of New York

Wan J. Kim Former Assistant Attorney General, Civil Rights Division

Jeffrey A. Taylor Former United States Attorney, District of Columbia Matthew W. Friedrich Former Acting Assistant Attorney General, Criminal Division

Chuck Rosenberg Former United States Attorney, Eastern District of Virginia

Ronald J. Tenpas Former Assistant Attorney General, Environment and Natural Resources Division Peter H. Coors 15205 West 32nd Avenue Golden, Colorado 80401

March 21, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chuck Grassley Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

SUBJECT: R. BROOKE JACKSON

Dear Chairman Leahy and Senator Grassley:

I am writing in support of R. Brooke Jackson, a nominee to the United States District Court here in Colorado.

Judge Jackson presided over a securities class action suit involving my family in 2004. I observed his performance as a judge in that context, and studied through the 30+ page opinion that he wrote.

While I don't know what Judge Jackson's political views might be, and they might be quite different from mine, there is no one I would rather have on the federal bench here than Brooke Jackson. I have no doubts about his fairness, ability to act without bias, or his judicial demeanor.

I urge your committee to consider his nomination promptly.

Sincerely, and with Best Regards,

Peter H. Coors

Court of Appeals

STATE OF COLORADO 101 WEST COLFAX AVENUE, SUITE 800 DENVER, COLORADO 80203 (303) 861-1111

JANICE B. DAVIDSON Chief Judge

March 29, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

Re: Nomination of Judge Brooke Jackson to the U.S. District Court for the District of Colorado

Dear Senator Leahy:

I know Judge Jackson well, both personally and professionally. Indeed, I have had the opportunity not only to know his work in my role as an appellate judge, but have had the opportunity to observe him in his courtroom, and to interact with him on the Colorado Chief Judges' Council, numerous professional committees, and professional social events.

Although we judges are generally restrained in our demeanor, I cannot help but express my wild enthusiasm about Judge Jackson's nomination. In my twenty-five years on the bench, I have known and worked with many, many talented judges and attorneys, but few as outstanding, in every respect, as he.

I think the world of him: he is such a good judge, and such a good human being. He is kind and patient in his courtroom, treating

everyone with respect and dignity, and exuding a reassuring message to anyone appearing in front of him that this is a wise, unbiased, and thoughtful person who will thoroughly and fairly decide your case. Although he can be extremely tough at times, it is always obvious why that treatment is absolutely appropriate for the situation.

I also deeply admire his legal scholarship and dedication to the concept of equal justice under law. He devotes boundless energy, not only to his own courtroom docket, but to the fair delivery of justice, in his own judicial district, statewide, and beyond.

In sharing with you my unequivocal admiration for Judge Jackson, I know that I am hardly alone. His reputation in the legal community is outstanding. For all the right reasons, he engenders widespread respect and affection.

I cannot think of a better choice for Colorado's federal district court. It would be of great benefit and service to my state, and a bow to Lady Justice, if his nomination were to be confirmed.

Thank you for your attention to this matter,

Janice B. Davidson

Chief Judge, Colorado Court of Appeals



COMMITTEE ON THE JUDICIARY

ELIZABETH DONOGHUE CHAIR 15 MAIDEN LANE, 17TH FLOOR NEW YORK, NY 10038 Phone: (212) 349-3000 Fax: (212) 587-0744 edonoghue@hmgdjiaw.com

PETER M. KOUGASIAN VICE CHAIR 80 CENTRE STREET, ROOM 624 NEW YORK, NY 10013 Phone: (212) 815-0495 Fax: (212) 815-0498 pkougasian@specharc.org

STEPHEN S. MADSEN VICE CHAIR 845 EIGHTH AVENUE, 41 TOOR NEW YORK, NY 10019 Phone: (212) 474-1886 Fax: (212) 474-3700 smadsen@cravath.com

MIRIAM M. BREIER SECRETARY 156 FIFTH AVENUE, SUITE 600 NEW YORK, NEW YORK 10010 Phone: (212) 791-3900 Fax: (646) 649-9650 mmb@bdulaw.com

STEPHANIE G. WHEELER SECRETARY 125 BROAD STREET NEW YORK, NY 10004 Phone: (212) 558-7384 Fax: (212) 291-9166 wheelers@sullerom.com

ELIZABETH DORFMAN ADMINISTRATIVE ASSISTANT 42 W. 44TM STREET NEW YORK, NY 10036 PHONE: (212) 382-6772 Fax: (212) 869-2145 edorfman@nycbar.org June 14, 2011

The Honorable Patrick J. Leahy Chairman, Senate Judiciary Committee 433 Russell Senate Office Building United States Senate Washington, D.C. 20510

Dear Senator Leahy:

We are pleased to inform you that the Committee on the Judiciary of the New York City Bar has found Edgardo Ramos, Esq., APPROVED for appointment to the United States District Court for the Southern District of New York.

Very truly yours,

Elizabeth Donoghue

Chair

The Association of the Bar of the City of New York 42 West 44th Street, New York, NY 10036-6689 www.nycbar.org



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District Court

FIRST JUDICIAL DISTRICT 100 JEFFERSON COUNTY PARKWAY GOLDEN, COLORADO 80401-6002

MARGIE L ENQUIST

March 18, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chuck Grassley Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Dear Chairman Leahy and Senator Grassley,

I write today on behalf of my colleague and Chief Judge, Brooke Jackson. I have observed Judge Jackson's personality, work ethic and decision making from a variety of perspectives — as a law clerk (for another District Judge), as a Deputy District Attorney, and as a District Court Judge.

Over the years have I seen that Judge Jackson has an even temperament, both on and off the bench. He is kind and respectful to everyone in the building, from the janitorial staff to his fellow judges. Even though he is carrying a full caseload on top of his duties as Chief Judge, he regularly visits the clerk's office to make sure that they know he appreciates their efforts (and he recognizes them every year with a luncheon hosted by the Judges). In trying economic times, he has had a very positive impact on morale due to his efforts.

However kind his heart, Judge Jackson is certainly not soft on crime. As a prosecutor assigned to crimes against children, I observed that he was very supportive of law enforcement efforts to abate crime and had concern for public safety. Judge Jackson did not hesitate to impose lengthy prison sentences (which were often indeterminate) in appropriate cases. He displayed appropriate empathy for victims and their families, but did not rule based upon emotion – he applied the law in a fair and evenhanded manner to all who appeared before him. He continues to conduct himself in that manner to this day.

As a fellow judge, I have been privileged to work with one of the most ethical, well-respected, intelligent, and thoughtful members of the Colorado legal community. Although I will hate to see him leave our district, I know that he will make a significant positive contribution to the U.S. District Court bench. Your gain is truly our loss.

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March 23, 2011

The Honorable Senator Patrick Leahy, Chairma Committee on the Judiciary 224 Dirksen Senate Office Building Washington DC 20510

The Honorable Senator Chuck Grassley, Ranking Member Committee on the Judiciary 24D Dirkson Senate Office Building Washington DC 20510

RE: Judge R. Brooke Jackson

Gentlemen:

It is with pleasure I write in support of the nomination of Judge R. Brooke Jackson for confirmation to the bench of United States District Court for the District of Colorado. Judge Jackson and I live in the same Jefferson County, Colorado community and I have known Brooke for more than 20 years as an attorney, judge and neighbor.

Judge Jackson practiced law at the highest level for 25 years before his appointment to the state court bench. Brooke was a lawyers' lawyer who set a high standard for impeccable integrity and professional ability. I had the opportunity (some might say misfortune) to appear opposite Brooke and I marveled at his courtesy and collegiality as he taught me a thing or two about how to conduct yourself in a courtroom.

On the Colorado First Judicial District Court bench, Judge Jackson addressed a complete array of judicial matters and every attorney who had a chance to appear before him, as I did, appreciated his judicial demeanor and commitment to a fair result. Through a legislative office I held for a period of time, I observed Judge Jackson as Chief Judge of the First Judicial District where he implemented innovative court and docket management practices during a time of fairly drastic budget cuts. Many of his practices were adopted by other judicial districts throughout Colorado.

The federal judiciary and the citizens of Colorado will be well-served with Judge Jackson's continuation of his public service on the United States District Court Bench.

Yours very truly.
Wile Fulley

Michael F. Feeley

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410 Seventrenth Street, Suite 2200 | Denvez, CO 80202-4432 Brownstein Flyatt Parber Schreck, LLP | bhfx.com

303.223.1111 feet

Michael F. Feeley Attorney at Law 303.223.1237 tel 303.223.8037 fax mfeeley@bhfs.com



Marcy G. Glenn Phone 303-295-8320 Fax 303-295-8261 mglenn@hollandhart.com

March 31, 2011

The Honorable Patrick Leahy Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chick Grassley Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Re: R. Brooke Jackson - Nominee for U.S. District Court (D. Colo.)

Dear Chairman Leahy and Senator Grassley:

I write in support of Judge R. Brooke Jackson, who has been nominated for the vacant seat on the United States District Court for the District of Colorado. I support Judge Jackson's nomination because he is an exceedingly bright, hard-working, and fair man, he was an outstanding trial attorney, he has distinguished himself as state judge, and I am confident he would contribute mightily to the federal judiciary. 2.33 34

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يتوافع فالفوال إرعول I have known Judge Jackson for over 28 years, since I began working as a young associate at Holland & Hart, where Judge Jackson spent his career until his appointment to the state trial bench in 1998. We tried several large and complex cases together and also worked closely on a number of appeals. Judge Jackson is simply among the very best lawyers I know. He begins with the blessing of being very, very smart. He combines his God-given intelligence with extraordinary discipline and organization, a true thirst for knowledge, and an ability to focus on the big-picture, even as he pays studious attention to details. When Judge Jackson analyzes issues, he also brings to bear decades of experience and a healthy dose of pragmatism; he is careful and deliberate, but he does not shy away from difficult and even unpopular decisions.

On a personal level, Judge Jackson displays absolute integrity. Over the course of our practice together, we confronted our share of ethical issues, and I was consistently impressed by his approach: Protect the client, follow the rules, and do the right thing. Judge Jackson cares deeply about people. He is devoted to his family. And he is a true public servant. He chose to leave the lucrative practice of law at Holland & Hart because he yearned to contribute to a society that had given so much to him and that so needed his talents. His tenure on the Jefferson County District Court has confirmed his dedication to an impartial application of the law. He has a welldeserved reputation as among the very best of Colorado's jurists.

Finally, as a former law clerk for a now-senior judge on the federal district court in Colorado, and one who has practiced in that court for decades and knows many of its judges, I believe that Judge Jackson would add greatly to the overall strength, reputation, and esprit de corps of that court - which has suffered from the recent untimely death of one judge, the scandal-ridden

Holland& Hart w



March 21, 2011 Page 2

resignation of another, and the burden of, until recently, two long-unfilled vacancies. I urge you to move Judge Jackson's name forward for hearing at the next Senate Judiciary Committee hearing, which I understand will be on April 13.

Please do not hesitate to contact me if I can provide further information. And, Senator Leahy, please give my regards to Vermont. I am a Dartmouth alum and we own a home in Norwich but, sadly, our visits are infrequent.

Sincerely.

Marcy G. Glenn of Holland & Hart 113

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Statement of Senator Chuck Grassley Ranking Member Committee on the Judiciary United States Senate

Before the Committee on the Judiciary

On the Nominations of:

Henry F. Floyd, to be United States Circuit Judge for the Fourth Circuit

Nelva G. Ramos, to be United States District Judge for the Southern District of Texas

Richard B. Jackson, to be United States District Judge for the District of Colorado

Sara L. Darrow, to be United States District Judge for the Central District of Illinois

Lisa O. Monaco, to be Assistant Attorney General, National Security Division

April 13, 2011

Mr. Chairman:

On today's agenda, we have a nominee to be a United States Circuit Judge for the Fourth Circuit, and three to be District Court Judges. In addition we will hear from the nominee to be an Assistant Attorney General, heading the National Security Division of the Department of Justice. I join you in welcoming the nominees as well as their families and friends.

Ms. Lisa Monaco is nominated to be Assistant Attorney General heading the National Security Division of the Department of Justice. The mission of the National Security Division (NSD) of the Department of Justice is to carry out the Department's highest priority – to combat terrorism and other threats to national security. The Division was created in 2006 as part of the PATRIOT Act reauthorization. Much of the reorganization creating the Division was to promote a unified approach in accomplishing its mission. The structure of the Division was designed to ensure greater coordination between prosecutors

and law enforcement agencies, on the one hand, and the intelligence community, on the other.

Tearing down this wall, enhancing investigatory tools, streamlining national security investigations, and modernizing investigative authorities to take account of new and emerging technologies are some of the reforms we have made. But there is work to be done, as we recently heard from the FBI Director. Reauthorization of critical tools must be a priority of this committee.

I will continue to work with the Chairman in pursuit of a permanent extension of the "lone wolf" provision, of the "roving" electronic surveillance provision, and of the "business records" provision. In addition, I will work to preserve and strengthen other tools available to our national security and law enforcement professionals.

In addition, we are considering four judicial nominations today. Henry Floyd, a sitting United States District Judge in South Carolina, is nominated to be U.S. Circuit Judge for the Fourth Circuit. We have already confirmed four of President Obama's nominees to the Fourth Circuit. That is as many as were confirmed to that Circuit during the two terms of President Bush. I would note that eight of President Bush's nominees to the Fourth Circuit were returned to the President, receiving no up or down vote by the Senate.

We are also considering three District Court nominations. They are Sara Lynn Darrow, to be U.S. District Judge for the Central District of Illinois; Richard B. Jackson, for the District of Colorado; and Nelva G. Ramos, for the Southern District of Texas. All of these vacancies are or have been declared to be judicial emergencies. I would note that the Colorado vacancy could have been filled years ago. Gregory E. Goldberg was nominated to this seat in July of 2008 by President Bush. As with too many of his nominees, the Committee took no action on this nomination.

Mr. Chairman, I will not repeat the biographical information on our nominees. I commend each of them for their prior public service and for their willingness to serve. I ask

unanimous consent that the balance of my statement be entered into the record. I look forward to reviewing the testimony.

Henry F. Floyd is nominated to be United States Circuit Judge for the Fourth Circuit. Judge Floyd received is B. A. degree from Wofford College in 1970. He graduated from the University of South Carolina School of Law in 1973, after which he began his private law practice. In 1974, Judge Floyd formed the law firm of Floyd & Welmaker, which focused on civil, criminal, and domestic litigation in addition to deeds, wills, estates, and real property closings. In 1978, Floyd & Welmaker merged with Acker & Acker, a firm focusing on property, probate, trust and commercial law. From 1986 to 1992, while continuing his full-time law partnership, he served as attorney for Pickens County.

In 1992, Judge Floyd was elected by the South Carolina General Assembly to serve as a Circuit Court Judge for the Thirteenth Judicial Circuit. In September, 2003 he was confirmed by the Senate and appointed by President Bush to be United States District Judge for the District of South Carolina.

Sara Lynn Darrow is nominated to be United States District Judge for the Central District of Illinois. She received her B.S. degree from Marquette University in 1992 and a J.D. degree from St. Louis University School of Law in 1997.

From 1997 to 1998, Mrs. Darrow worked in the Law Offices of Clarence Darrow, a small general practice firm in Rock Island, Illinois. In 1999, Ms. Darrow joined the Henry County (Illinois) State's Attorney's Office as an Assistant State's Attorney. She began handling juvenile, misdemeanor, and felony traffic cases. Upon promotion in 2000, she handled felony cases and serious juvenile abuse cases. She prosecuted a wide range of cases such as gun, burglary, rape, battery, drug, and arson offenses. She also represented the county in civil matters such as tax sales and small claims.

In 2003, Ms. Darrow began work as an Assistant United States Attorney in the Office of the United States Attorney for the Central District of Illinois. She prosecutes federal crimes

including drug conspiracy, gun, racketeering, child exploitation, fraud, and bankruptcy. She is responsible for all aspects of pre-trial litigation in addition to conducting trials. She has prosecuted approximately 300 defendants and tried 10 cases to verdict before a jury. Richard Brooke Jackson is nominated to be United States District Judge for the District of Colorado. Judge Jackson received his A.B. degree, *magna cum laude*, from Dartmouth College in 1969 and his J.D. degree, *cum laude*, from Harvard Law School in 1972. Following law school, Judge Jackson joined the firm of Holland & Hart as an associate, where he focused on a combination of commercial litigation and personal injury litigation, representing both plaintiffs and defendants. In 1978, he became a partner and opened the Washington, D.C. office of the firm. Additionally, he served on a number of committees within the firm and was Chairperson of the Litigation Department.

In 1998, he was appointed to serve as District Judge for the First Judicial District of Colorado. As a District Judge, he handled a mixed docket of criminal, civil, and domestic relations cases. In 2003, he was appointed Chief Judge. In addition to his full caseload, he handles substantial administrative duties of the court. During his service, Judge Jackson has served on many committees within the Judicial Branch, including a committee that reviewed, modified and proposed to the Supreme Court, Colorado's version of the Model Code of Judicial Discipline.

Nelva Gonzalez Ramos is nominated to be United States District Judge for the Southern District of Texas. She received a B.S. degree, *summa cum laude*, from Southwest Texas State University in 1987 and a J.D. degree, with honors, from the University of Texas School of Law in 1991.

After graduation from law school, Judge Ramos began her career as an attorney at Meredith & Donnelly in Corpus Christi, Texas. She worked primarily in personal injury litigation, employment litigation, and insurance defense. In 1997, she resigned from the firm to enter duty as a municipal court judge. During her campaign for District Court Judge during 1999 to 2000, she worked as a solo practitioner.

Judge Ramos was appointed as a municipal court judge for Corpus Christi in 1997, where she had a criminal docket. She presided over 500 cases that went to verdict or judgment. When she announced her candidacy for District Court Judge in 1999, she resigned from this position as required by the city charter. In 2001 she was elected as District Court Judge for the 347th Judicial District. She was reelected in 2004 and in 2008. As District Court Judge, she has presided over 1200 cases that went to verdict or judgment. While serving as a District Court Judge she helped establish a Domestic Violence Court, and served as the Local Administrative Judge for the Nueces County District Courts.

Lisa O. Monaco is nominated to be an Assistant Attorney General. If confirmed, she will head the National Security Division within the United States Department of Justice. Ms. Monaco received a B.A. degree from Harvard University in 1990. She received her J.D. degree from the University of Chicago Law School in 1997.

Upon graduation from Law School, Ms. Monaco was a law clerk for Judge Jane R. Roth on the United States Court of Appeals for the Third Circuit. Other than her brief stint as a law clerk, Ms. Monaco has worked for the Department of Justice in one capacity or another for her entire career. Beginning in September of 1998 she served as a Counsel to the Attorney General. There she provided information and staff assistance on a range of criminal justice issues. In January of 2001 she became an Assistant United States Attorney in the United States Attorney's Office for the District of Columbia. She served in that capacity until 2007. During this time her work focused entirely on criminal matters. While an Assistant United States Attorney she served from May 2004 to January 2006 on the Enron Task Force. In that capacity she participated in the investigation and prosecution of Enron executives.

In January of 2006, she was detailed to the Federal Bureau of Investigation where she served as Special Counsel to the Director. She eventually joined the FBI on a permanent basis as Special Counsel to the Director. She later served as the Deputy Chief of Staff and Counselor and then as Chief of Staff to the Director. In 2009, she began work as an Associate Deputy Attorney General where she assisted in the supervision of federal criminal and civil matters related to national security. In 2010, she became Acting

Principal Associate Deputy Attorney General, her current position. As the Principal Associate Deputy Attorney General she supervises the staff of lawyers in the Office of the Deputy Attorney General and assists the Deputy Attorney General in overseeing the operations of the Department.



Haddon, Morgan and Foreman, P.C.
Harold A. Haddon

150 East 10th Avenue Denver, Colorado 80203 РН 303 831 7364 гх 303 832 2628 hhaddon@hmflaw.com

March 29, 2011

The Honorable Patrick Leahy Chairman, Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

The Honorable Charles Grassley Ranking Member, Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, DC 20510

Dear Chairman Leahy and Senator Grassley:

I write to express my support for the nomination of Judge Brooke Jackson to be a United States District Judge for the District of Colorado. I am a lawyer presently engaged in the private practice of law in Denver, Colorado representing individuals and corporations involved in criminal and civil litigation. I have served as a special prosecutor for the Colorado State Grand Jury and as the Chief Trial Deputy for the Colorado State Public Defender's office. I have also served on four different Colorado federal district court nominating commissions spanning the years 1975 to 2009. I chaired the commission appointed by Senator Ben Campbell in 1993 and I co-chaired the commission appointed by Senators Udall and Bennet in 2009.

I have appeared before Judge Jackson in several difficult and complex state court cases. While he has often ruled against positions I have advocated, his decisions have always been thoughtful, thorough and fair. He rules expeditiously but is still able to fully analyze complex issues. His demeanor is uniformly respectful to all parties, witnesses and attorneys. Unsuccessful litigants in his courtroom have commented to me that they came away from the experience believing that they had been treated fairly.

Judge Jackson has earned the universal respect of the prosecutors, police agencies and practicing lawyers in his state judicial district. He has done so because he possesses the extraordinary attributes found in great trial judges: deep intellect, hard work, patience and respect for all the competing litigants who appear in his court every day. He can be a tough judge in hard cases but, in the tradition of former Chief Judge Richard P. Matsch (D. Colo.), he unfailingly treats even the most difficult litigants with dignity.

The Honorable Patrick Leahy The Honorable Charles Grassley March 29, 2011 Page 2

Judge Jackson will be an exceptional United States District Judge and I highly commend him to you as worthy of confirmation.

Sincerely,

Harold & Haddon

HAH/sh

Senator Patrick Leahy Chairman Senate Judiciary Committee 437 Russell Senate Building Washington, D.C. 20510 April 8, 2011

Senator Chuck Grassley Ranking Member Senate Judiciary Committee 135 Hart Senate Office Building Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley,

It is an honor and pleasure for me to unconditionally support the nomination of Lisa Monaco for the position of Assistant Attorney General of the Department of Justice National Security Division. During my tenure as FBI Assistant Director for the Counterterrorism Division and subsequently as the Executive Assistant Director for the National Security Branch, I worked with Ms. Monaco on a day-to-day basis. Ms. Monaco was detailed to the FBI as Special Counsel and then Chief of Staff for Director Robert Mueller. Not only did she work with FBI Agents and Analysts, but she skillfully interacted with other agencies in the U.S. Intelligence Community as well as with our international partners to resolve terrorism threats facing our country. In this capacity, we enjoyed a close and productive working relationship. I found her to be an intelligent, well prepared, and a dedicated professional, tirelessly focused on our mission. Ms. Monaco can be credited with helping to successfully safeguard national security in a volatile and dangerous period when tenacity, adaptability, and precision decision-making were paramount. Because she consistently fulfilled these requirements, she was considered a valued member of our team.

Ms. Monaco's Department of Justice experience as a career prosecutor and her understanding of the FBI National Security Branch mission and operations make her exceptionally well qualified to lead the National Security Division. I highly recommend her for this important position.

Sincerely,

Willie T. Hulon

Senator Hutchison Statement Confirmation Hearing for Nelva Gonzales Ramos April 13, 2011

Thank you very much, Mr. Chairman.

It is my pleasure to introduce Nelva Gonzales Ramos, who has been nominated to serve as a district judge for the Southern District in Corpus Christi, Texas. Judge Ramos graduated Summa Cum Laude at Texas State University in San Marcos with a degree in education. She then went on to receive her Juris Doctor from my alma mater, the University of Texas School of Law, where she again graduated with honors.

After growing up in Port Lavaca, Texas, Judge Ramos now finds herself right down the road in Nueces County, Texas, serving as the 347th District Court judge for the last ten years. Judge Ramos began her judicial career in 1997, serving as a municipal court judge in Corpus Christi.

During these years, Judge Ramos has been routinely recognized by the members of the Corpus Christi Bar Association as an outstanding district judge. She has gained the respect of her colleagues because of her demeanor on the bench. Judge Ramos is seen as fair and thoughtful and is often commended by her colleagues for her skilled legal mind. I am equally as convinced that Judge Ramos has a solid understanding of the law and is well qualified to handle the daily challenges of being a federal district judge in South Texas. She will do well succeeding Judge Hayden Head.

I recommend, Nelva Gonzales Ramos, highly to you and hope that we can have an expeditious confirmation of her nomination.

Statement of Senator John F. Kerry Hearing on the Nomination of Lisa Monaco to be Assistant Attorney General April 13, 2011

It is my pleasure to offer my support for Lisa Monaco, the President's nominee to be the Assistant Attorney General for the National Security Division. A Massachusetts native and a public servant through and through, Lisa is a qualified and well-regarded choice for this post.

Lisa was born in Boston, grew up in Newton, and excelled at Harvard. Her parents Dr. Anthony Monaco and Mary Lou Monaco, still live in Newton and I am confident they are incredibly proud of the tough prosecutor Lisa has become.

From her time as a federal criminal prosecutor, where she took on Enron, to her work in the FBI Director's office in the difficult and decisive days following the 9/11 attacks, Lisa has doggedly pursued justice and dedicated herself to strengthening the safety and security of our nation. She has served as Chief of Staff to FBI Director Robert Mueller, was Deputy Attorney General James M. Cole's primary adviser on national security issues, and currently is the principal associate deputy attorney general at the Justice Department.

Lisa's achievements belie her age; she has impressed leaders from both sides of the aisle with her tenacity and acumen. Michael Mukasey, Attorney General under President George W. Bush has said this of Lisa, "I believe that she has both sound judgment and a keen understanding of national security law . . . [and] is well qualified to serve in what is a critical position for both the Department and our Country." FBI Director Mueller had great faith in her when he promoted her from within the FBI ranks to be his chief of staff before the age of 40.

If confirmed Lisa will be the head of the National Security Division, overseeing cases that affect national security and foreign relations. As a former prosecutor and as the Chairman of the Foreign Relations Committee I can tell you that I can think of no time in recently history where this country has faced greater challenges in those vital arenas. At this time of great peril I am confident that Lisa will do a superb job in protecting our country.

I enthusiastically support Lisa Monaco's nomination for the position of Assistant Attorney General for the National Security Division and hope for her swift confirmation to this critical post. The Honorable Patrick Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510 March 25, 2011

Dear Senator Leahy,

As the former criminal justice and legal affairs reporter in federal and state courts for the Rocky Mountain News in Denver for more than 20 years, I have covered cases in the court of Jefferson County District Judge Brooke Jackson for many years. I know that Judge Jackson has the support of many members of the legal community, but perhaps it is helpful to also have the perspective of a layperson who has observed Judge Jackson as a representative of the community. It is my honor to write this letter in support of Judge Jackson's nomination to the United States District Court for the District of Colorado.

Judge Jackson has a reputation for fairness, integrity, unbiased rulings and true concern for the people who pass through his court. To sit in his court is to learn about the American system of justice. He is patient and possesses a judicial temperament that allows him to handle tense situations in his court with humor and ease. He respects and supports the law enforcement community and is respected by members of that community in return.

As a journalist who covered federal courts and agencies for many years, I appreciate the efficiency, speed, promptness, decorum, judicial expertise and competence of the federal courts. Judge Jackson has always run his court as a federal judge does. His rulings are clear and he takes time to explain them, particularly when members of the public are in the gallery. However, he runs a tight ship, moves cases along and puts up with no disrespect or incompetence in his court. He is decisive and tough in handling the most sensitive and controversial cases.

Over the years, I have observed Judge Jackson preside over some very controversial cases, among them the aftermath of the murder of students at Columbine High School and the resulting painstaking review of documents and autopsy reports to see what should become public. Because of the way in which Judge Jackson handled this case and explained his actions, even those who disagreed with his rulings knew by the way the judge conducted himself in these proceedings that his goal was to balance the interest of the public with the privacy interest of the victims and the families. It was clear that his ultimate goal was justice, as it is in each case that comes before him.

For all of these reasons, I believe that Judge Jackson would make an excellent federal judge for Colorado. Thank you for considering my views.

Sinceceiv

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John R. Maxfield P.C. Phone 303-295-8341 Fax 303-295-8261 feid@hollandhart.com

March 18, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chuck Grassley Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

RE: Nomination of R. Brooke Jackson to the Federal District Court Bench

Dear Chairman Leahy and Senator Grassley:

This letter is in support of the Honorable R. Brooke Jackson's nomination to the Federal district court bench. I am a partner in the law firm of Holland & Hart LLP. I have known Judge Jackson since I started my career at Holland & Hart approximately 28 years ago. Judge Jackson was, and continues to be, a mentor and friend to me.

There is no one I would recommend more highly to the Federal bench than Judge Jackson. He personifies the integrity, toughness, fairness and respect for the law that are essential to the day-to-day duties and demands placed upon members of the Federal judiciary.

For two of our many years together at Holland & Hart, I had the privilege of serving on our law firm's five-person management committee with Judge Jackson. We faced a number of difficult decisions together. Our decisions would often have significant impact on the individuals involved. Judge Jackson always approached those decisions with an open mind and a deep and abiding respect for the fact that our decisions would significantly impact people. More than anyone else on the management committee, Judge Jackson always insisted that we spend whatever time necessary to understand the relevant facts, and then to look at the particular situation from different angles and perspectives. Only then, did Judge Jackson bring his formidable intellect and judgment to bear on the situation. In making these decisions, Judge Jackson was extremely impartial. It didn't matter whether the difficult issue at hand involved a powerful partner or a staff person. Judge Jackson always dealt with the matter, with an even temperament, and willingness and toughness to resolve the issue fairly and impartially. These same characteristics are the hallmarks of Judge Jackson's service in the Colorado state judiciary.

Holland & Hart us

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The Honorable Patrick Leahy The Honorable Chuck Grassley March 18, 2011 Page 2

When Judge Jackson left our law firm to become a state district court judge in Jefferson County, Colorado, he was one of the most revered partners in the history of our firm. He was then, and continues to be, a huge loss to our law firm, not only because he was one of Colorado's best trial lawyers, but also because of the deep regard and affection that his partners at Holland & Hart have for him

When I learned of Judge Jackson's decision to leave the practice of law at the pinnacle of his career to join the judiciary, I asked him why. He simply said that this was the best way he could serve his community.

I would trust Judge Jackson with my life and there is no one whose judgment I respect more. I can think of no one who will better serve the United States and its citizens as a member of the Federal judiciary than the Honorable R. Brooke Jackson.

Respectfully submitted,

John R. Maxfield of Holland & Hart up

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U.S. DEPARTMENT OF JUSTICE

John F. Walsh United States Attorney District of Colorado

AUSA Name: MJ Menendez Title: Assistant United States Attorney Division: OCDETF Unit 1225 Seventeenth Street, Suite 700 Seventeenth Street Plaza Denver, Colorado 80202 (303) 454-0100 (FAX) (303) 454-0400

March 28, 2011

The Honorable Patrick Leahy Committee on Judiciary, Chairman United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

Dear Senator Leahy:

I am truly honored and privileged to write to you on behalf of the nomination of the Honorable Brooke Jackson for the federal bench in the District of Colorado. My name is M.J. Menendez. While others will write with more distinguished resumes, I write with a unique vantage point on Judge Jackson. I know Judge Jackson from serving in his jurisdiction for nine and a half years as an Deputy Jefferson County District Attorney. I then came to the Office of the United States Atroney from 2003 to 2006. In 2006, I was appointed to the Jefferson County District Court bench where His Honor Judge Jackson serves as the presiding judge. In my life, Brooke Jackson has acted as legal scholar, wise counselor, mentor, trusted friend and good neighbor, as our chambers were next door to each other. In mid-2009, I returned to the Office of the United States Attorney for the District of Colorado as Deputy Chief of the Organized Crime Drug Enforcement Task Force. If Judge Jackson is appointed, I will come full circle in practicing in front of him once again. Please forgive the length of this letter, but I believe recounting my many and varied experiences with Brooke Jackson will assist your decision-making process.

As a Deputy District Attorney, I tried more cases in front of Judge Jackson than any other judge in the District, and I watched Judge Jackson preside over homicides and death penalty litigation. The first aspect of his judicial persona that you should know about is that he makes the hard decisions. I suppose that sounds simple enough; after all, he is a judge. Such is not the case. Announcing a lengthy prison sentence in a criminal case, or ruling on dispositive motions In a multi-million dollar civil case are extremely tough tasks. Some judges just can't quit ruminating, thinking one more case or one more discussion will definitively settle the matter to be decided. Judge Jackson utilizes his

razor-sharp intellect, coupled with thorough understanding of the law, sufficient humility to take additional time to research and ask questions to hone issues, and innate sense of right and wrong to carefully consider all information. Thus, he has the ability to make difficult decisions that are legally and factually accurate and sound, and he actually does so—he decides, and moves on. I recall one case when I was a domestic violence litigator wherein a victim came to the Court to lift a restraining order against the judgment of the Office of the District Attorney in a case of extreme violence. Judge Jackson listened carefully to the victim, considered all information, and refused to lift the order. He treated the victim with compassion, generosity of time and talent, and empathy, but he remained firm as the victim wailed, screamed, cursed him and ran toward him on the bench. The judge didn't flinch, but outwardly remained composed and gentile in a situation that must have taxed his soul. The litigation proceeded. The case was fairly tried, and the domestic violence perpetrator was sent to prison. About six months later, the victim reappeared and told Judge Jackson that he had saved her life, as she had only come asking for a lifting of the order after her perpetrator threatened to kill her. The event I recount is one of countless episodes wherein Judge Jackson acted with courage and strength in the face of hostility and pressure.

Judge Jackson's long history of civil practice as an attorney, and criminal experience from presiding over mixed dockets in Jefferson County, make him a particularly appealing candidate for the federal bench. Others will write detailing Judge Jackson's monumental successes as civil advocate and practitioner. I know of his acumen in civil law from collecting and reading his judicial opinions which I kept on my chamber's desk for ready reference. I also regularly sought Judge Jackson for his patient tutoring and guidance on complex on civil issues. In preparation to take the bench between appointment in September, 2006 and assumption in January 2007, I spent days watching Judge Jackson preside over a complex civil trial. His courtesy for parties, concern for jurors, and due regard for the advocacy strategies of attorneys was unfailing, yet he commanded his courtroom with polite authority and dignity. Judge Jackson is a prolific writer, and he has a work ethic to meet his personal standards regarding written work. On one occasion, I was contemplating whether to write a lengthy opinion in a marital dissolution involving child custody, or whether I could simply and easily rule from the bench. Brooke asked, "MJ, which avenue will make the

litigants understand that the thought and care in your decision? Which avenue will make the litigants understand they were heard, and bring the difficult issues to closure?" I wrote the decision.

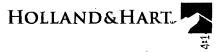
The act of judging is largely reactive in nature, but not for Brooke. In his position as presiding Judge, he chairs the Criminal Justice Strategic Planning Committee in Jefferson County, comprised of the jurisdiction's police chiefs, elected District Attorney, Chief Public Defender, Superintendent of Schools, victim witness advocates, parole, probation, elected city council members, and other leaders of the citizenry. The goal of the committee is to work to better the justice system by taking a proactive approach to community issues, such as education, probation supervision, funding for mental health resources in the jail, and bail reform; just to name a few. Judge Jackson is one of the most highly regarded and trusted public servants and leaders in Jefferson County, Colorado, and his loss to the jurisdiction will be keenly felt.

The Jefferson County bench is the best state court bench in Colorado. I know because I had the privilege to sit among them. I left because my passion is criminal law, and I thought civil litigants deserved someone who cared about their cases as much as I care about the criminal law. Watching and

listening to Judge Jackson, with his calm demeanor, ability to put up with attorney nonsense and bickering, and unfailing dignity in all matters—minute and monumental—made me know that I should return to my beloved US Attorney's Office and the work I do best. I have practiced, and now practice in United States District Court in Colorado, in front of a beach that rules with patience, tolerance, soundness of legal reasoning and judgment, courtesy, and a work ethic that never flags or falters. Judge Jackson's is a "fire-tested" judicial officer who has earned his the right to be one of them. He will make you proud of your decision to appoint him, and he will serve the United States with honor and dignity, just as he has served Colorado for so many years. Thank you so much for consideration of my thoughts.

Respectfully Submitted,

S/ MJ Menendez
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Jane Michaels Phone 303-295-8162 Fax 303-295-8261 jmichaels@hollandhart.com

The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

March 18, 2011
The Honors
Ranking M The Honorable Chuck Grassley Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Dear Chairman Leahy and Senator Grassley:

As a colleague and former law partner of the Honorable Brooke Jackson, Chief Judge of the Jefferson County District Court, I am writing this letter to urge the Senate Judiciary Committee to expedite Judge Jackson's nomination to serve as a United States District Judge for the District of Colorado.

Judge Jackson's credentials are impeccable. He is extremely intelligent, efficient, and fair-minded. It would be difficult to find many candidates with Judge Jackson's legal acumen. He has bipartisan support from an overwhelming number of lawyers, jurists and litigants in Colorado. Judge Jackson's even temperament and judicial demeanor make him a particularly worthy candidate for the federal judiciary. He understands complex legal issues. He is tough on crime and supportive of law enforcement. He is able to analyze complex factual and legal issues and to apply the law fairly, without prejudice or preconceived notions.

Our federal court is swamped with a backlog that is negatively impacting the legal community and the public at large in Colorado. We need to have an exceptionally well qualified judge appointed to the U.S. District Court for the District of Colorado as soon as possible. 1 know that I speak for all of my partners at Holland & Hart and most other lawyers and judges in the legal community in saying that Judge Jackson is extremely well qualified for the federal bench and should be confirmed promptly. I urge you to expedite his nomination and press this matter for hearing on April 13th.

If I can be of further assistance or answer any additional questions, I would be pleased to do so.

Jane Michaela
Jane Michaela of Holland & Hart up

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TED MINK, SHERIFF RAY FLEER, UNDERSHERIFF

200 JEFFERSON COUNTY PARKWAY • GOLDEN, COLORADO 80401-2697 • 303-277-0211 • FAX 303-271-5307 • WWW.JEFFCOSHERIFF.COM

March 30, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

Senator Leahy,

I am writing to you, in your role as Chair of the Committee on the Judiciary, to express my full support of Jefferson County District Court Judge Brooke Jackson's nomination to the United States District Court for the District of Colorado.

As the duly elected sheriff of Jefferson County, Colorado, with nearly 40 years of law enforcement experience, I believe I have a qualified perspective of the judiciary and the qualities necessary to be successful on the bench. Since being appointed to the District Court for Colorado's First Judicial District in 1998, Brooke Jackson has exhibited all the qualities and traits not only as a judge, but as a person, that in my opinion would make him an exceptional member of the United States District Court bench. He has demonstrated decisiveness and toughness when appropriate, and as such has developed strong support in the legal and law enforcement community.

In the aftermath of the 1999 Columbine High School shootings in Jefferson County, a series of complex cases and legal issues came before his court. In dealing with these issues Judge Jackson displayed a sense of fairness, dignity, respect and compassion for all those involved.

Brooke Jackson has always shown respect and been supportive of law enforcement without losing sight of his obligation to ensure justice will be served.

 $I \ wholeheartedly \ support \ the \ nomination \ of \ Brooke \ Jackson \ to \ the \ United \ States \ District \ Court \ for \ the \ District \ of \ Colorado.$

Respectfully,

Ted Mink

Jefferson County Sheriff

Nomination of Lisa Monaco as Assistant Attorney General for National Security, Department of Justice Statement of Support

I am writing this letter to support the nomination of Lisa Monaco as Assistant Attorney General for National Security. Ms. Monaco and I first met in 2005, when I joined the FBI from CIA as the deputy director of the then-new National Security Branch at the Bureau. At the FBI, Ms. Monaco and I worked on policy and intelligence issues that required executive attention; Ms. Monaco's presence at the daily morning threat briefing when she returned to the Department of Justice allowed us to continue working together through the time of my departure from government in 2010.

Ms. Monaco has key professional and personal characteristics that make her an excellent choice for the position of Assistant Attorney General. She has field experience as a prosecutor and senior-level knowledge of both investigations (FBI) and prosecutions (DoJ headquarters). Her years sitting at the daily morning intelligence briefings, watching both foreign intelligence and the evolution of the FBI's domestic intelligence capability, also have given her unique exposure to different dimensions of national security work. Her professional experience is broad, and almost unique. I saw her bring this wealth of experience to bear every day as we wrestled with difficult challenges, and her ability to look at a new problem and apply what she knew showed the rare combination of flexibility and great expertise.

Ms. Monaco's responses to complicated problems we faced consistently showed good judgment, even in the most trying of circumstances, along with acute intelligence. She was among the smartest professionals with whom I worked. But she balanced thoughtfulness and an incisive intelligence with the willingness to ask questions in areas where she lacked knowledge. In the fast-moving world of domestic intelligence and complex national security investigations, this mix of intellect, experience, and judgment is guaranteed to help her succeed, particularly when these talents are combined with the humility she has to ask good questions and seek counsel.

Ms. Monaco has other personal traits that ensure she would succeed. In particular, her personable style will help maintain morale in a workforce that faces stress every day, nearly a decade after the events of 9/11. DoJ has highly capable lawyers and support staff; her style will help the Department retain this cadre.

Given Ms. Monaco's background across different aspects of national security problems, and her leadership style, I feel privileged to add my name to the long list of former government officials who know her and believe she would be a superb Assistant Attorney General. And a superb leader.

Sincerely,

Philip Mudd

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Michael B. Mukasey Partner Tel 212 909 6062

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April 5, 2011

The Honorable Patrick J. Leahy, Chairman The Honorable Charles W. Grassley, Ranking Member United States Senate Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Dear Chairman Leahy and Senator Grassley:

I write to support the nomination of Lisa Monaco to serve as the Assistant Attorney General of the National Security Division of the United States Department of Justice.

I had the privilege of working directly with Ms. Monaco during my tenure as Attorney General. She was then the Chief of Staff to the Director of the Federal Bureau of Investigation. Based on my meetings and conversations with Ms. Monaco, I believe that she has both sound judgment and a keen understanding of national security law. Which is to say, she understands both the stakes and the rules. I found her bright, hardworking, and highly competent.

In sum, Ms. Monaco is well qualified to serve in what is a critical position for both the Department of Justice and our Country. I am pleased to commend her to you.

rours sincerety,

Michael B. Mukasey

STATE OF COLORADO FIRST JUDICIAL DISTRICT

CHRISTOPHER J. MUNCH, JUDGE 100 Jefferson County Parkway Golden, Colorado 80401-6002 Phone (303) 271-6170 March 17, 201 E



The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chuck Grassley Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Dear Chairman Leahy and Senator Grassley,

I am writing to urge the prompt consideration of Chief Judge Brooke Jackson for the current federal District Court vacancy for the District of Colorado. The unfilled positions on the federal District Court have created a truly critical problem for the fair, prompt administration of justice here. To say that Judge Jackson is uniquely qualified is, if anything, an understatement.

I doubt that I need comment on the backload our federal District Court is suffering. I am sure your staff has been fully briefed on this matter.

I would like to say a few things about Judge Jackson. I met him before he became a state District Judge. He was a partner in one of Denver's biggest firms and his reputation as a business law litigator was truly stellar. When his turn came, he was called into my court for jury duty. We asked if service would be a hardship, and he told us that he felt honored to be called upon to do his duty as a citizen. It is rare that either litigating attorney wants a lawyer on the jury, but both sides wanted Brooke. He led the jury by his example of fairness and diligence but declined to be its foreperson. He asked them to select a foreperson with a non-legal background. Years later, my wife was called to jury duty and selected for service in Judge Jackson's court. He treated the jury attentively and with respect, commanded the courtroom and brought dignity to the experience.

I was a prosecutor in Denver for twelve years and have been a judge for twenty five. I have never met a judge who works as hard—at least 65 hours per week--or complains as little as Brooke. He almost never declines when asked to sit on the community boards and commissions necessary for the fair administration of justice. He is the unquestioned civil

law scholar of our bench and has been our point man in improving the administration of domestic, criminal and juvenile justice. He has established a drug court, an office to assist pro se domestic litigants, and many juvenile programs. His cooperation with our Sheriff and County Commissioners to minimize the most severe impacts of our local financial crisis has been a model of economic efficiency. He has fostered a culture of efficiency, cooperation and public service among all of the Magistrate, County and District Court judges. He has instituted an annual Employee Appreciation lunch and many other programs to let the people who work here know that they are valued. In an era of effective salary reductions and furloughs, such efforts are important.

Every six years we are thoroughly evaluated by lawyers, litigants, law enforcement and jurors. Their evaluations are anonymous and the evaluators pull no punches. Many judges resign or retire rather than have their results published. Brooke's evaluations have always been stellar. In the criminal area his evaluations show him to be considered slightly "tougher" than average, but completely fair. His civil and domestic evaluations have been similarly excellent as have his evaluations for diligence, temperament, efficiency and knowledge of the law.

Finally, while I realize that our local situation cannot be central to your consideration, I ask you to consider it. We continue to investigate the kinds of efficiencies that Brooke inspires — things like a business court and criminal bond reform (for more effective pretrial supervision of those charged with felonies). Progress on such things and on a myriad of administrative matters is difficult until we know who our Chief Judge will be six months from now. Brooke is understandably reluctant to commit the District to courses when he doesn't know whether he or a successor will pilot them.

I must honestly acknowledge that we have mixed emotions about losing our Chief Judge. But the federal court needs him and they need him now. The quicker his nomination can be considered, the quicker he can start helping them solve their significant problems.

Please feel free to contact me if you have any questions or if there is anything I can do to assist you in this matter.

STATE OF COLORADO

DENVER

80203

101 West Colfax

X390XXX

FAST FOURTEENTS AVENUE

March 29, 20011

The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Re: Nomination of the Hon. Brooke Jackson

Dear Senator Leahy;

I am writing in support of the nomination of Judge Brooke Jackson as a judge on the United States District Court for the District of Colorado. I came to know Brooke when he was appointed as a District Judge for the First Judicial District in Colorado where I was serving as the Chief Judge.

Brooke adjusted to this new role very quickly. He assumed a full case load from the very beginning, hearing civil, criminal and domestic relations cases. He came to the court with an impeccable reputation in the community and very high standing in the legal community. He quickly proved that his reputation was fully justified. He ran his courtroom efficiently, applied the law without bias or favoritism, and used his discretion with fairness and reason.

Brooke presided over difficult cases, showing that he could be tough when it was necessary while still being fair to all parties. He was supportive of law enforcement, but not in ways that comprised his fairness or that caused a perception of unfairness. His demeanor in court was always calm and even tempered. As Chief Judge, I never received a complaint about the way he handled or decided his cases.

I am pleased to support Brooke Jackson's nomination for this important position. If he is appointed, he will bring honor to the Court by his integrity, his legal skills, and his work ethic.

Sincerely Yours.

Judge (Retired)



Michael L. O'Donnell 303.244.1850 odonnell@wtotrial.com

March 24, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chuck Grassley Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Re: Nomination of Brooke Jackson

Dear Chairman Leahy and Senator Grassley:

I write in support of the nomination of Colorado state court Judge Brooke Jackson for the open seat on the USDC for the District of Colorado bench. I am former Chair of the American College of Trial Lawyers of Colorado and the Chairman of Wheeler Trigg O'Donnell, a civil trial firm based in Colorado. I have known Judge Jackson for 25 years as a fellow lawyer, friend and jurist. He is extremely bright, hard working and thoughtful. In my opinion, he is the finest state court judge currently sitting in Colorado. He is fair, tough, supportive of law enforcement, and applies the law without bias. I believe he has the desire and skills to be a first rate federal judge. Thank you very much for your consideration of his nomination.

Respectfully,

Michael L. O'Donnell

MOD:jp

STATE OF COLORADO FIRST JUDICIAL DISTRICT

LILY W. OEFFLER District Court Judge
100 Jefferson County Parkway
Golden, Colorado 80401-6002
Phone (303) 271-6110



The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chuck Grassley Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Dear Chairman Leahy and Senator Grassley,

It is my privilege to write a letter of recommendation on behalf of the Honorable R. Brooke Jackson, Chief Judge of Jefferson County to become a Federal District Court Judge. I have known Brooke Jackson in both a personal and professional capacity for 10 years. As Chief Judge, he is not only responsible for managing the entire judicial team made up of 13 district court judges, 8 county court judges, 8 magistrates and a staff of 300; but, he also juggles a full caseload of 200 felonies, 200 civil cases and 50 domestic cases. He somehow manages this busy docket and his administrative duties with ease.

Judge Jackson's reputation goes beyond the inner workings of the courthouse. His reputation in the legal community as a whole is impeccable. He consistently applies the law fairly without bias. His judicial demeanor is calm and consistent. He exercises discretion wisely and takes his role as a chief judge very seriously. He is fair-minded and extremely well thought of by the entire law enforcement community.

Judge R. Brooke Jackson would be an asset to the Federal Bench. Except for the fact that we could never truly replace him here, I have no reservations in recommending him as Federal District Judge.

Thank you for your consideration in this matter.

Lily W. Deffler

District Court Judge



City of Lakewood

Kevin Paletta, Chief of Police Lakewood Police Department

445 South Allison Parkway Lakewood, Colorado 80226-3133 3031987-7100 Voice 3031987-7111 TDD 3031987-7296 Fax

March 30,2011

The Honorable Patrick Leahy, Chairman Committee on the Judiciary United States Senate 224 **Dirksen** Senate **Office** Building Washington, DC 20510

Dear Chairman Leahy;

As the Police Chief for the **Lakewood** Police Department and a thirty year law enforcement veteran, I have had the unique opportunity to work closely with Brooke Jackson. He has my strongest recommendation and is deserving of an appointment to the United States District Court for the District of Colorado.

My association with Judge Jackson goes back many years and we currently serve together on the Jefferson County Strategic Planning Committee, of which he is the chair. This committee is comprised of leaders from a variety of criminal justice disciplines from throughout the area and serves a vital function. Under Judge Jackson's leadership, we have implemented many innovative, comprehensive, and effective criminal justice programs which include Life Skills Training, strategies for reducing jail overcrowding, an enhanced bonding process, and a home nursing program. Judge Jackson's vision, wisdom, and leadership have been integral in keeping the committee focused, leading to the many successful outcomes we have achieved.

Judge Jackson has long been active in the law enforcement and legal communities. He's a selfless individual who devotes countless hours to the many causes he is passionate about. My staff has frequent occasion to interact with him as well, and we all agree that Judge Jackson epitomizes the qualities one expects in a United States District Court Judge. He is fair, decisive, able to bring clarity to highly complex issues, and applies the law in an unbiased manner. I'd be remiss if I didn't also mention Judge Jackson's even temperament, engaging personality and an excellent sense of humor.

I truly appreciate the opportunity to comment on Judge R. Brooke Jackson's suitability for appointment to the United States District Court. He will do an outstanding job for the people of Colorado.

Sincerely,

Kevin Paletta Chief of Police

21_ Palith



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Office of the District Attorney First Judicial District Jefferson and Gilpin Counties

Scott W. Storey District Attorney



March 28, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

Re: Hon. R. Brooke Jackson, Judicial Nominee

Dear Senator,

By way of introduction, I am a Senior Chief Deputy District Attorney in the First Judicial District of Colorado. I have been a prosecutor for 32 years. During these years I had the opportunity to work with many judges and want to take a moment to inform you of the qualifications most admired by the prosecution community.

Of course, basic fairness is a judicial absolute. Judge Jackson has always exemplified impartiality and fairness. He has been consistent in his application of the law without bias.

Judge Jackson came to the First Judicial District from a civil law practice but he quickly became conversant with criminal law and exemplified leadership in working with the criminal justice community. He is well respected by law enforcement and as Chief Judge has consistently provided leadership for the Criminal Justice Strategic Planning Committee which is made up of members from the criminal justice community including the Sheriff and police chiefs.

Early in this nomination process, as the President of the First Judicial District Bar Association I had the opportunity to write a letter of support for Judge Jackson on behalf of that organization and want to

reiterate the sentiments expressed in that letter about his stature in the legal community as well as the leadership he provides.

Judge Jackson possesses the legal knowledge, common sense and temperament required to be a superior judicial officer.

In conclusion, Judge Jackson exemplifies the judicial qualities necessary for the federal bench and certainly has my unqualified support. If I can provide further information, please contact me at 303-886-8681.

Mark C. Pautler

Sincerely

Senior Chief Deputy District Attorney

ED PERLMUTTER

7TH DISTRICT, COLORAGO

WASHINGTON OFFICE: 1221 LONGWORTH HOUSE OFFICE BUILDING WASHINGTON, DC 20515 PHONE: (202) 225-2645 FAX: (202) 225-5278

> DISTRICT.OFFICE: 12600 WEST COLFAX AVENUE SUITE B-400 LAKEWOOD, CO 80215 PHONE: (303) 274-7944

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Congress of the United States

House of Representatives

March 30, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary Washington, DC 20510 The Honorable Charles Grassley Ranking Member Committee on the Judiciary Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

On January 5, 2011, President Obama re-nominated Judge Richard Brooke Jackson to be United States District Judge for the District of Colorado. As a friend and colleague of Judge Jackson, I believe he has the judicial knowledge and temperament necessary for the federal bench, and I fully support his timely confirmation.

I am a lifelong resident of Jefferson County, Colorado, the same jurisdiction over which Judge Jackson has served as a state district judge for 13 years. I knew Judge Jackson before he was appointed to the bench. He had a sterling reputation among members of the Colorado Bar Association. I have since practiced law before Judge Jackson, and I have come to know him quite well as both a friend in the community and colleague. I have also served on a variety of panels with him. He is a man of integrity and good standing who presides over his courtroom in a fair and balanced manner. Judge Jackson embodies the characteristics Coloradans expect and deserve in their federal judges.

Since 1998, Judge Jackson has presided over a wide variety of cases important to the people of the State of Colorado, including a well-balanced docket of criminal and civil proceedings. Notably, he presided over multiple cases involving the Columbine High School shootings of 1999 and handled them with the utmost professionalism, sensitivity and fairness. In reviewing his career on the bench, the American Bar Association rates him "Unanimously Well Qualified," and I could not agree more.

I urge the Committee on the Judiciary to promptly hold a confirmation hearing for Judge Jackson and send his nomination to the full Senate for confirmation. He is a dedicated public servant, and his qualifications are exemplary. The people of Colorado would be well served to have him on their federal district court.

Member of Congress

PRINTED ON RECYCLED PAPE



Paul D. Phillips Phone 303-295-8131 Fax 303-295-8261 pphillips@hollandhart.com

March 22, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Re: Judge Brooke Jackson, District of Colorado

Dear Chairman Leahy:

I am writing to voice my unqualified support for moving Judge Brooke Jackson's name forward at the hearing on April 13, 2011 before the Senate Judiciary Committee. I have known Judge Jackson for more than 30 years. He has a well-deserved reputation throughout Colorado and the Rocky Mountain West as a superb man of the law who brings outstanding qualities of character, integrity, an even judicial temperament and tough but fair values to the task of judging.

I know Judge Jackson very well, because he and I practiced law together for more than 20 years at Holland & Hart, at which time he took a severe pay cut to pursue his commitment to public service by becoming a Colorado State District Court Judge. I knew Judge Jackson to be supportive of the law enforcement community and the rule of law; he has the highest possible standing in the Colorado legal community; and he is a person who would apply the law fairly and intelligently, without bias or preference to anyone. Simply put, he would be an ornament to the Federal Bench. One of the most sound and sensible actions that Congress could take this session would be to confirm Judge Jackson as a United States District Court Judge.

I sincerely hope that Judge Jackson's nomination will be moved forward for hearing on April 13th. Thank you for your service, and please do not hesitate to call me with any questions or comments.

Vand Na

Paul D. Phillips

for Holland & Hart LLP

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HOLLEY, ALBERTSON & POLK, P.C.

ATTORNEYS AT LAW
DENVER WEST OFFICE PARK
SUITE 100, BUILDING 19
1667 COLE BLVD,
GOLDEN, COLORADO 80401
PHONE (303) 233-7838
FAX (303) 233-2860

GEORGE ALAN HOLLEY (1925 - 2002)

MELISSA R. MEITUS

March 30, 2011

Honorable Patrick Leahy Chairman Committee on the Judiciary Washington, D.C. 20510

Honorable Charles Grassley Ranking Member Committee on the Judiciary Washington, D.C. 20510

Re: Nomination of R. Brooke Jackson-United States District Court, Colorado

Dear Chairman Leahy and Ranking Member Grassley:

I am writing this letter to seek the confirmation of R. Brooke Jackson as a United States District Court Judge, State of Colorado. I understand the sincere obligation that members of your committee have with respect to the process of confirmation of a person to become a United States District Court Judge. Therefore, I take the obligation of writing to you with regard to this matter very seriously.

The undersigned and this law firm have been active in the Republican Party in Jefferson County, Colorado, for many years. I served on the Judicial Nominating Commission that sent Judge Jackson's name to the Governor for appointment as a State District Court Judge. I served on that Commission for six years. During the time in which Judge Jackson made application to become a State Court District Judge, I served as the Chairman of the First Judicial District Nominating Commission. I have also served on enumerable other committees and commissions that deal with the conduct of Judges and their role in Colorado. I have practiced law for nearly 33 years and have appeared in hundreds of matters before District Court Judges. I have tried numerous cases before Judge Jackson.

I feel that Judge Jackson is unqualifiedly the best State Court Judge that I have ever appeared before. He has an incredible knowledge of the law, but more importantly, brings a real world sensibility to the proceedings before him. He is thorough, analytical and fair in all of his rulings and determinations. I sincerely believe that the people of the State of Colorado and the United States could not be better served than by the confirmation of Judge Jackson as a United States District Court Judge. He is well respected by all members of the community beyond the

Chairman Leahy and Ranking Member Grassley March 30, 2011 Page 2

legal community. I have personally seen Judge Jackson make the extra effort to become involved in non-partisan matters that vitally affect our community. He generously gives of his time to participate in appropriate civic activities. Most recently, I visited with Judge Jackson in his role as a member of what is known as the Jefferson Foundation, which is a non-profit organization that is dedicated for purposes of enhancing and dealing with the education of students within the Jefferson County, Colorado, School District. This is a thankless task and requires enormous effort on behalf of the participants in that organization.

I respectfully urge your Committee to proceed to confirm the nomination of Judge Jackson to the position of the United States District Court Judge. I want you to know that this correspondence is unsolicited by the applicant or anyone on his behalf. I feel compelled to write to you because I am a person who actually appears before the United States District Court and sincerely believe that Judge Jackson would be a fine addition to that bench and would improve all aspects of the administration of justice.

I am more than happy to speak with anyone or assist in any manner I can to encourage the confirmation of Judge Jackson. Thank you for the opportunity to have presented my point of view.

Sincerely,

HOLLEY ALBERTSON & POLK, P.C.

Dennis B. Polk

DBP/db

3:27

5358 Wildcat Court Morrison, CO 80465

The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

> Re: R. Brooke Jackson Nomination for Federal District Judge United States District Court for the District of Colorado

Dear Senator Leahy:

I am writing this letter in support of R. Brooke Jackson's nomination for a vacancy on the Colorado Federal District Court Bench. I won't waste your time in discussing the critical need to fill vacancies on the Federal Bench, because I am sure that given your position you are well aware of that fact.

I will, however, tell you a little about Brooke Jackson. I have known Brooke for many years, both as a colleague on the Colorado First Judicial District Court Bench and as a friend. I have also served with him on committees and participated with him or seen him in public activities or legal seminars. I, therefore, feel that I have a more than adequate basis to comment on his abilities to serve as a Federal District Judge.

Brooke is one of the hardest working judges I know. He always comes into the court early in the morning and generally leaves the court after the normal person has eaten dinner. (His wife, Liz, is extremely tolerant of this.) Needless to say this means he is always very well prepared and knowledgeable about whatever kind of case comes before him. While he has an excellent temperament and is kind to all, he is also clearly in control of his courtroom.

In Colorado we have a system for evaluating judicial performance. This system surveys litigants, lawyers and other persons such as law enforcement personnel who appear in a particular judge's courtroom. Brooke has always scored extremely high in his evaluations by all of these groups. I have attached a copy of his most recent public evaluation to this letter. The evaluation reflects that 96% of non lawyers recommended that Brooke be retained as a Colorado District Court judge. The non lawyers surveyed included law enforcement personnel, probation officers, social service workers as well as litigants. As you can see Judge Jackson has the highest respect of all members of the community.

I am active in the Colorado Bar Association and know of my own personal knowledge from talking to attorneys throughout the state that Brooke is a very well respected jurist within the legal community and considered extremely fair by all who appear before him. He is what people wish all judges could be like - fair, unbiased, knowledgeable and considerate.

I hope this helps you to know more about Brooke. If you have any questions, please call me at 303 697-5991.

Thank you for taking the time to consider this letter.

Ruthanne Polidori Senior Judge

Enc.

Bill Ritter Jr. 1736 South Clarkson St. Denver, Colorado 80210

970 492 2650 (work)

April 1, 2011

The Honorable Patrick Leahy, Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chuck Grassley Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

RE: Hon. R. Brooke Jackson, Nominee for the U.S. District Court of Colorado

Dear Chairman Leahy and Senator Grassley,

For the past four years I was the Governor of Colorado. From 1993 to 2005, I was the elected District Attorney of Denver, Colorado. Prior to that, I practiced law as a state and federal prosecutor for several years. In my time as a trial prosecutor, as the District Attorney of Denver, and as the Governor, I have come to know Judge Brooke Jackson. I have become well-acquainted with his work on the bench in the First Judicial District and his reputation in the Colorado legal community. It is with this background that I write this letter of support and recommendation to you.

Judge Jackson is exactly the type of Judge we need on the Federal Bench in Colorado. His record as a jurist stands for the proposition that a judge can be thoughtful, committed to precedent, fair to the litigants in his courtroom, and possess the right mixture of toughness and compassion. I have never actually appeared in front of Judge Jackson, but those who

have regard him as an extraordinarily competent jurist, even when he has ruled against them. He has the right intellect, to be certain, but he also has a grasp for what it means to be committed to eking out justice, case by case. He does not substitute the law with his own opinions, but where he has discretion, he makes great efforts to bend toward a just outcome for the individuals involved and for the community at large.

No system of justice is self-executing. It works, or does not work, because the people within the system are committed to the ideal of doing justice all day, every day. Judge Brooke Jackson is that person. He is that Judge. He would be an exceptional choice for the U.S. District Court Bench in Colorado and it is my hope you will confirm his nomination.

If I may be of any further assistance, please do not hesitate to contact me.

Sincerely.

Bill Ritter, Jr.

Office of the District Attorney First Judicial District Jefferson and Gilpin Counties

Scott W. Storey District Attorney



March 28, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

and

The Honorable Chuck Grassley Ranking Member Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

Honorable Members of the United States Judiciary Committee:

I am writing this letter on behalf of Judge Brooke Jackson who has been nominated to the United States District Court bench for the District of Colorado. I am the elected District Attorney in the First Judicial District, Jefferson and Gilpin Counties, Colorado. I have known Judge Jackson for over 15 years. I am familiar with his abilities as a trial court judge in the First Judicial District, and as an administrator in our judicial system.

As a District Court Judge, Judge Brooke Jackson is respected and known as a fair and decisive judge. He is conscientious and hard working. He has consistently received high marks in every category by attorneys and non attorneys participating in the Judicial Performance surveys. Deputy District Attorneys in my office have commented to me that Judge Jackson is always well-prepared. His rulings are organized and include detailed findings. His sentences can be tough when required, but always judicious. His judicial demeanor is what one would expect from a judge in the courtroom, and he applies the law without bias.

As the Chief Judge in our judicial district, Judge Brooke Jackson has been a leader. He has been creative in these times of dwindling budgets and stretched resources. He is the Chair of the Criminal Justice Strategic Planning Committee. In that role Judge Jackson has pushed innovative solutions and collaboration for the improvement of our criminal justice system.

Judge Brooke Jackson is a leader inside and outside the courtroom. He has contributed to the legal profession as a litigator, a diligent and just trial court judge, and an advocate for improving our judicial system. I strongly support the confirmation of Judge Brooke Jackson as the next U.S. District Court Judge for the District of Colorado.

Sincerely

Scott W. Storey District Attorney First Judicial District



STATE OF COLORADO

First Judicial District Ryan J. Stuart, Magistrate 100 Jefferson County Parkway Golden, CO 80401 303-271-6274 APR 8'11 AM 11:0

The Honorable Patrick Leahy, Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chuck Grassley, Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510 March 25, 2011

Dear Chairman Leahy and Senator Grassley:

I am writing this letter in support of Chief Judge Brooke Jackson's nomination to the US District Court and to urge the Senate to confirm Judge Jackson expeditiously.

I have had the pleasure to appear before Judge Jackson when I was a Deputy District Attorney in the First Judicial District, and I now serve as a District Court Magistrate in the judicial district in his charge. As a Deputy District Attorney I always enjoyed appearing in his courtroom as I found Judge Jackson to be fair and respectful to litigants and counsel. When the cases warranted it, Judge Jackson imposed firm, yet fair, sentences. One case in particular stands out in my mind. Two seventeen year old juveniles, charged as adults, were before Judge Jackson for sentencing on First Degree Assault and Attempted Escape after brutally assaulting a corrections officer at a youth detention facility. Before imposing sentence, Judge Jackson passionately spoke to the need to protect corrections officers and law enforcement officials and to set a clear expectation that assaults on those who serve would not be tolerated. He then sentenced the juveniles to 24 years in prison, the sentence I had recommended.

Working for Judge Jackson as a Magistrate, I have had the opportunity to get to know him even better. He is by far the hardest working person in the courthouse. Judge Jackson is usually the first person to arrive in the morning and the last to leave. He has an impeccable reputation in the legal community and among those who work with him in the courthouse.

I can think of no attorney or judge in the State of Colorado more qualified, by experience, temperament, or fairness, to serve on the federal bench than Chief Judge Brooke Jackson. I recommend his confirmation enthusiastically and without reservation.

Sincerely,

Ryan Stuart



ATTORNEY GENERAL OF COLORADO John W. Suthers

March 24, 2011

The Honorable Patrick J. Leahy Chairman, Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Re: Nomination of Richard Brooke Jackson for the U.S. District Court Bench

in Colorado

Dear Senator Leahy:

I am writing to urge the Judiciary Committee to support President Obama's nomination of Brooke Jackson to the United States District Court for the District of Colorado. He is an outstanding Colorado lawyer and jurist who would make an excellent addition to the federal court bench.

In my experience, and that of members of my office, Brooke Jackson is highly intelligent, has a tremendous grasp of the intricacies of the law, has an outstanding judicial demeanor, and is eminently fair. After graduating from Dartmouth and Harvard Law School, Brooke spent 26 years as an attorney with the prestigious firm of Holland & Hart. He was appointed to the state district court bench in 1998 and appointed chief judge of the 1st judicial district in 2003. He is respected by his fellow jurists, litigants, and the legal community at large. I consider him highly qualified for the federal bench and would urge you to move his nomination forward expeditiously.

Sincerely.

HN W. SUTHERS colorado Attorney General

WHITE & CASE

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Direct Dial + 1 202 626 3628 gterwilliger@whitecase.com

April 12, 2011

VIA E-MAIL

The Honorable Patrick J. Leahy Chairman Senate Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Charles E. Grassley Ranking Member Senate Committee on the Judiciary 152 Dirksen Senate Office Building Washington, DC 20510

Re: Assistant Attorney General for the National Security Division Nominee Lisa O. Monaco

Dear Mr. Chairman and Ranking Member Grassley:

I write to commend the Committee's support for the confirmation of Lisa Monaco to be Assistant Attorney General for the National Security Division of the Department of Justice.

It is quite evident that Ms. Monaco has the background, experience and temperament to be judged as extremely well-qualified for a leadership position in the Department of Justice. Moreover, I have learned that peers with whom she has worked in prior positions of significant responsibility regard her professional qualities as among the highest. It seems certain that the combination of the expertise that she possesses and a high regard for her by professional associates positions her well to exercise the leadership required of an Assistant Attorney General.

Moreover, I have had an opportunity to talk with Ms. Monaco about several of the issues and challenges our government generally and the Justice Department specifically face today in combating threats to our nation's security and to the safety of our people. The result of that exchange leaves me convinced that Ms. Monaco appreciates fully the gravity of the responsibilities of the Division and is well oriented to address successfully the challenges presented.

ABU DHABI ALMATY ANKARA BEIJING BERLIN BRATISLAVA BRUSSELS BUCHAREST BUDAPEST DOHA DÜSSELDORF FRANKFURT GENEVA HAMBURG HELSINKI HONG KONG ISTANBUL JOHANNESBURG LÖNDON LÖS AMGELES MEXICO CITY MIAMI MOSCOW MUNICH NEW YORK PARIS PRAGUE RIYADH SÃO PAULO. SHANGHAI SILICON VALLEY SINGAPORE STOCKHOLM TOKYO WARSAW WASHINGTON, DC

WHITE&CASE

April 12, 2011

For these reasons, I respectfully urge the Committee's favorable consideration of her nomination.

Sincerely yours,

George J. Terwilliger III

cc: All Members of the Senate Committee on the Judiciary

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O'BRIEN & THOMAS, LLC

ATTORNEYS AT LAW

MAUREEN J. O'BRIEN, ESQ.

Jackie Barker, Legal Assistant

12600 W. Colfax Avenue, Suite CASY Eakewood, Colorado S(215 Phone: (3/8) 238-2648 Fax: (3/3) 232-516 www.obrien-thomaslaw.com

March 31, 2011

The Honorable Patrick Leahy Chairman, Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington D.C. 20510

RE: Nomination of Brooke Jackson to the Federal Court Bench (Colorado)

Dear Senator Leahy:

I am writing to support the nomination of Brooke Jackson to the Federal District Court bench in Colorado. Currently Judge Jackson is serving as a District Court Judge in the 1st Judicial District of Colorado. I served as the elected District Attorney from January, 1993 until January, 2005. During that time I observed Judge Jackson on numerous occasions and also served on committees with him. For the past 3 years I have been a practicing criminal defense lawyer and have appeared before Judge Jackson on numerous occasions. I also serve on the First Judicial District Judicial Performance Committee that evaluates our judges and published an evaluation for purposes of retention. My comments are based upon these many contacts and observations under a variety of circumstances.

Regardless of whether I was appearing as a prosecutor or a defense attorney, I have always found Judge Jackson to be fair and impartial. He treats all parties, be they attorneys, witnesses or defendants with dignity and respect at all times. I have never seen him angry or act in any way except with total professionalism. I have found Judge Jackson to be very decisive in his decision-making and a tough Judge with respect to sentencing when the facts and circumstances so dictate. As I mentioned, I have served on committees with Judge Jackson that serve the legal community and have found his standing in this peer group to be beyond reproach. He is extremely well respected. When I was serving as the Chief Law enforcement official in the district I found that the law enforcement community admired and respected Judge Jackson.

I guess the best compliment I can provide is to tell you that if I were a defendant or a police officer I would be very happy to have my case before Judge Jackson. He is tough but fair. He is impartial and even-handed. He treats everyone with the maximum respect and dignity. He is totally unbiased regardless of who the parties are or who they represent. He has been an exceptional Presiding Judge in this jurisdiction. I support and endorse him with reservation or hesitation.

David I Thomas



Christopher H. Toll P.C. Phone 303-290-1637 Fax 303-290-1606 ctol@bylandhart.com

March 28, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chuck Grassley Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Re: Hon, R. Brooke Jackson Judicial Appointment

Dear Chairman Leahy and Senator Grassley,

I write in support of confirmation of the Hon. R. Brooke Jackson's appointment to the United States District Court for the District of Colorado. I understand that Judge Jackson's confirmation hearing may proceed on April 13. I urge you to proceed with his hearing at the earliest possible date, and to vote in favor of his confirmation.

I have known Judge Jackson for 27 years, since I was a summer clerk at my law firm, Holland & Hart. In those days, Judge Jackson was a young partner at our firm, making a name for himself as a trial lawyer in the Denver area courts. His most noteworthy quality as a litigator back then was his unquenchable thirst to be in trial. He would try any case, anywhere, anytime, for the pure joy of being in court. And he encouraged us young lawyers to be the same way. On more than one occasion, he promised a client a low flat fee—that was destined to lose money for the firm—just to give me the opportunity to go try a small case in Denver County Court. He wanted all of us to share his love of the courtroom.

Judge Jackson's second-most noteworthy quality as a litigator was his excellence. Much of that flowed from his enthusiasm for the practice of law, but it was also a function of his intellect. The man is flat out brilliant. He was known for his intelligence then, and he remains known for it now as Chief Judge of the Jefferson County District Court. There are few in Colorado who command the same respect as Judge Jackson when it comes to legal acumen.

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Aspen Boulder Carson City Colorado Springs Derver Denver Fech Center Billings Boise Cheyenne Jackson Hole Las Vegas Rono Salt Lake City Santa Fe Washington, D.C. O



March 24, 2011 Page 2

I know that from the day he took the bench in Jefferson County it was his highest priority to treat everyone in his courtroom with complete respect and even-handedness. And that is indeed the reputation he has earned over the years. I have heard nothing but the highest compliments of his fairness and judicial demeanor. He is frequently recognized as being one of the best—if not the best—state court trial judge we have in Colorado.

But now he is ready for a new challenge. When I had occasion to chat with him recently I asked him whether he was at all intimidated by the prospect of learning entirely new bodies of federal law that he would not have encountered on the state court bench. He laughed and said to the contrary, he could not be more excited about the opportunity to learn something new. I saw the same twinkle in his eye that I saw 20 years ago when he was preparing for trial. All judges should have such enthusiasm.

Judge Jackson will be a stellar addition to our federal bench. I hope you will do everything within your power to make that happen as soon as possible.

Thank you for your consideration.

Sincerely,

Christopher H. Toll of Holland & Hart LLP

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April 11, 2011

VIA E-MAIL AND FIRST CLASS MAIL

The Honorable Patrick J. Leahy, Chairman The Honorable Chuck Grassley, Ranking Member Senate Committee on the Judiciary SD-224 Dirksen Senate Office Building Washington, D.C. 20510-6275 writer's e-mail address kwainstein@omin.com

WRITER'S DIRECT DIAL (202) 383-5118

Dear Chairman Leahy and Ranking Member Grassley:

Please accept this letter in strong support of the President's nomination of Lisa Monaco for the position of Assistant Attorney General for National Security.

I served in that position when the National Security Division was first established, and I carry a deep affection for the Division's members and a personal interest in knowing that they have strong and effective leadership. Based on my decade of work experience and friendship with Lisa, I am convinced that she is the person who can provide that leadership.

As you know, the AAG for National Security sits astride the intersection of the Justice Department's law enforcement and intelligence programs. As such, the job requires a deep understanding of both programs and an ability to channel their different practices, personnel and priorities toward the overriding objective of protecting our national security. Over the course of her exceptional Justice Department career, Lisa has gained the experience and insights necessary to meet these demanding job requirements.

First, Lisa has an in-depth knowledge of the workings of law enforcement, thanks to her six years in the trenches as a prosecutor in the District of Columbia U.S. Attorney's Office handling everything from violent crime cases to the complex fraud trial against a group of former Enron executives. This experience gave Lisa a strong ability to analyze and assess the merits of a criminal case and the sound judgment required to handle the myriad tactical and strategic calls that must be made in the course of a significant investigation.

Importantly, her prosecutorial experience has also honed her understanding that aggressive investigative activities can -- and must -- be carried out hand-in-hand with the protection of privacy and civil liberties. On many occasions, Lisa and I have analyzed the

O'MELVENY & MYERS LLP

The Honorable Patrick J. Leahy, Chairman, April 11, 2011 - Page 2

privacy implications of a certain course of investigative action, and I have always been struck by the depth of both her legal analysis and her commitment to civil liberties.

Lisa has equally extensive practical experience in the field of intelligence law. As the FBI Director's counselor and Chief-of-Staff and in the Office of the Deputy Attorney General, Lisa has been actively involved in many of the significant national security investigations over the past five years. That operational experience has given her an important familiarity with Intelligence Community processes and personnel, and has honed her judgment in the difficult issues that arise in the course of intelligence operations.

In addition, Lisa brings to the job a seasoned perspective on high-level management in the Department of Justice. From her early experience as a counselor to Attorney General Reno to her management of the FBI Director's office and the Deputy Attorney General's agenda, Lisa has shown an aptitude for leadership. She recognizes that effective management requires one to both master the subject matter of the job and lead by example and inspiration. She also understands that management requires an intense focus on bridging differences and building consensus — a skill that is particularly important in the national security realm which involves so many actors at every level of state, federal and foreign government, all of whom have their own perspectives and agendas. Her consistent success at the highest levels of the Justice Department is evidence that Lisa is fully equipped with these skills and applies them very effectively.

Lisa also recognizes one other important truism -- that national security operations are no place for politics. As we all recognize, it is vital to the credibility and effectiveness of the National Security Division -- and the national security program as a whole -- that its leaders assess their options without regard to politics. Lisa has been doing just that for many years now, and her non-political reputation will serve her well in the tough decisions she will have to make as Assistant Attorney General.

I applaud the President's nomination of someone of Lisa's caliber for this important position. I believe Lisa is ideally suited to serve as Assistant Attorney General, and that the Department and the Nation will be very well served with her at the helm of the National Security Division. Please do not hesitate to contact me if I can provide further information that would assist the Committee in its consideration of this important nomination.

Sincerely.

Kenneth L. Wainstein

O'MELVENY & MYERS LLP

Kuntt L. Wain



U.S. DEPARTMENT OF JUSTICE

John F. Walsh

United States Attorney District of Colorado

1225 Seventeenth Street, Suite 700 Seventeenth Street Plaza (FAX) Denver, Colorado 80202 303-454-0100 303-454-0400

April 1, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

Re: Support for R. Brooke Jackson for the U.S. District Court, District of Colorado

Dear Senator Leahy:

I am writing in strong support of the nomination of the Hon. R. Brooke Jackson to the United States District Court for the District of Colorado. I have known Brooke Jackson for more than 16 years, and based on my personal and professional experience with him, believe that he would be a tremendous addition to our U.S. District Court bench.

Judge Jackson and I first met in 1995, when he was a partner at Holland & Hart, LLP, and I was a new "of counsel" lawyer at that firm. I had just returned to Denver after serving for eight years as an Assistant U.S. Attorney in Los Angeles, where I had been Chief of the Major Frauds prosecution section. Brooke was already a legend at Holland & Hart when I arrived, renowned for his ability to take extraordinarily complex matters and distill the successfully for trial to a jury. Because of his reputation as a pillar of the firm, I initially approached him with some caution, but immediately found him to be warm, self-deprecating and personable in every way. Far from giving the "new kid on the block" a cold shoulder, he welcomed me to the firm. We have been personal and professional colleagues, directly and indirectly, ever since.

From that personal experience, I know that Judge Jackson has a rare combination of professional and personal gifts that make him extremely well suited to the U.S. District Court bench. Let me describe those gifts as I have experienced them over the years.

First and foremost, Judge Jackson is a powerful, non-partisan and unbiased legal thinker who has the capacity to take tough legal and factual issues and make sense of them. In fact,

The Honorable Patrick Leahy April 1, 2011 Page 2

Judge Jackson is attracted to those tough problems out of intellectual curiosity and drive. He is a "lawyer's judge," and comes to every case with an open mind, a strong practical focus, and with the recognition that, as Justice Holmes famously commented, the life of the law has not been logic, but experience.

Moreover, as Judge Jackson's years on the Colorado bench demonstrate, he has a truly judicial temperament. He approaches the job with humility and with a thorough respect for the parties before him and their counsel. He acknowledges his own fallibility, and is willing to listen. He acts firmly, rapidly and fairly, and enjoys great respect and even admiration in the law enforcement community. His capacity for work is enormous. He understands — and shows by his actions that he understands — that being a judge is an act of public service.

Judge Jackson's career as a whole underscores that commitment to public service. As a highly-respected senior partner in the largest law firm in Colorado, he chose to seek a seat on a state trial court, to the surprise of many at the time. As a judge (and as chief judge of his judicial district), he has taken on extensive administrative duties in addition to a heavy caseload, all the while working with only a small staff. I know from countless conversations with him that he sees his work as a judge as a calling.

Finally, I should call to your attention one additional, highly important measure of Judge Jackson's character. Judge Jackson understands that as a judge, he is in a unique position to act as a teacher and as a mentor, and to reach across traditional barriers in our society. I have seen him mentor young attorneys extensively – both at Holland & Hart, and while he has been serving as a judge – and have been struck by his desire to build a broad, diverse cadre of talented lawyers who share his love of the law and of public service. I have seen him take middle school students into his chambers to give them a sense of how our judicial system actually works – including one middle school student who a decade later sought me out to tell me that his experience with Judge Jackson helped lead him to become a lawyer. He has also reached out over the years to the growing Latino community in our state, and enjoys a well-earned reputation for fairness in the community as a whole.

In sum, Judge Jackson would be a tremendous addition to our U.S. District Court here in Colorado. His nomination has my strong support.

I would be very happy to discuss Judge Jackson with you or with your staff at any time. Thank you for the work that you do on these matters of great importance to our country.

ohn F. Walsh

Office of the District Attorney First Judicial District Jefferson and Gilpin Counties **Scott W. Storey** District Attorney



March 31, 2011

The Honorable Patrick Leahy Chairman, Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

Re: Nomination of Judge Brooke Jackson for the Federal District Court

Dear Senator Leahy:

Please allow me to introduce myself. I am currently a senior chief deputy district attorney in Colorado's First Judicial District where Brooke Jackson presides as chief district court judge. I have over thirty years experience in the criminal justice system, including over eighteen years as a prosecutor. In addition, I had the privilege of serving as the Executive Director of the Colorado District Attorneys' Council, representing all of Colorado's twenty-two elected district attorneys before the Colorado General Assembly and acting as a liaison with the Office of the Governor and the Attorney General. In 2004, I was appointed by Governor Bill Owens to the district court bench in the First Judicial District where I served with Brooke Jackson. In 2007, I was asked by Governor Bill Ritter to join his cabinet as the Executive Director of the Colorado Department of Public Safety. I also chaired the Colorado Commission on Criminal and Juvenile Justice for over three and one-half years. Finally, I should mention that I am a lifelong Republican.

It is a distinct honor to write in support of Judge Brooke Jackson's nomination to the federal district court bench. I can state without hesitation or equivocation that Brooke Jackson is one of the finest lawyers and judges that I have ever known. Brooke's legal ability is only exceeded by his exceptional character and integrity. His sense of justice is unparalleled. Often when difficult decisions needed to be made, my fellow judges and I would seek Brooke's advice and counsel. He has an extraordinary talent to distill a case to its essence and focus on the most salient points. Brooke assiduously adheres to the rule of law and controlling precedent. He also has an abiding respect for the separation of powers and the limited role of the judiciary in our system of justice.

Since the majority of my professional experience has been in the criminal justice arena, I am particularly interested in Brooke's approach to criminal matters. He consistently exhibits a respect for the rights of all defendants, but he never neglects victims' issues or his responsibility to preserve public safety within the parameters of his job. The sentences that he imposes are fair, balanced, and proportional to the crimes committed. His command of the rules of evidence and criminal procedure, his demeanor, and the decorum established in his courtroom result in deputy district attorneys requesting to be assigned to his division. Brooke sets a standard for competence and professionalism to which all district court judges should aspire to attain.

Please accept my unqualified and strongest possible endorsement of Judge Brooke Jackson's nomination to the federal district court bench.

Thank you for considering my thoughts on this very important matter.

Respectfully yours,

Peter A. Weir Senior Chief Deputy District Attorney

First Judicial District Office of the District Attorney

500 Jefferson County Parkway, Golden, Colorado 80401-6020 (303)271-6800 FAX (303) 271-6888



Malcolm E. Wheeler 303.244.1870 wheeler@wtotrial.com

March 21, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chuck Grassley Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Dear Chairman Leahy and Senator Grassley:

I am writing to support the nomination of Judge Brook Jackson for appointment to the bench of the United States District Court for the District of Colorado. I have known Judge Jackson for many years, and he has deservedly earned a reputation as one of the finest trial judges in the State of Colorado. Before his appointment to the Colorado bench, he was one of the premier trial lawyers in the state. Of considerable importance is that he tried cases both for plaintiffs and for defendants, a background that has enabled him to be a particularly fair-minded judge in his years on the bench.

Sincerely yours,

Malcolm E. Wheeler



Maureen Reidy Witt Phone 303-290-1629 Fax 303-290-1606 mwitt@hollandhart.com

March 21, 2011

VIA UPS OVERNIGHT MAIL

The Honorable Patrick Leahy Chairman Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

The Honorable Chuck Grassley Ranking Member Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510

Re: Nomination of R. Brooke Jackson for the United States District Court

for the District of Colorado

Dear Chairman Leahy and Senator Grassley,

I write in support of the nomination of R. Brooke Jackson to serve on the United States District Court for the District of Colorado and to urge that Judge Jackson's name be moved forward for the hearing of the Senate Judiciary Committee scheduled for April 13, 2011.

I have known Brooke Jackson since 1979 as a colleague and then as my law partner at the law firm of Holland & Hart in Denver, Colorado. Throughout my career, Brooke has been my advisor, mentor and friend. Brooke was instrumental in my decision to become a trial lawyer and taught me how to be an ethical and effective litigator. I have had the opportunity to personally observe numerous trials and proceedings in his courtroom and, last Spring, had an opportunity to chair a case before him.

Brooke is a man of impeccable character, keen intellect, unquestionable fairness and profound dedication to our system of justice. Brooke has had the very finest legal education and hands-on training as a trial attorney and as a judge in a wide-variety of cases from complex civil litigation to challenging criminal matters. Brooke is extremely able and intelligent. There is no task in our legal system beyond his capability. Brooke is dedicated and hard-working. He invests himself in insuring that cases are well-handled and that prompt and equitable resolutions are achieved. Brooke comes to cases with an open mind, without any bias, prejudice or predisposition. He

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The Honorable Patrick Leahy The Honorable Chuck Grassley March 21, 2011 Page 2

treats everyone with the utmost respect and courtesy. He is thoughtful and even-handed at all times. He is always in command of his docket and his courtroom. Brooke provides the perfect balance of toughness and fairness on the bench and is widely recognized in our community as a model jurist, as well as a truly exemplary individual.

Brooke has devoted himself to becoming an outstanding judge in every respect, just as he did when he was a trial lawyer. Before Brooke assumed his position on the Jefferson County District Court bench, for example, he voluntarily spent nights driving with Jefferson County law enforcement officials on their shifts so he could learn what challenges they confronted in their jobs on a daily basis. It is that kind of commitment to learning all information relevant to his job and appreciation of those with whom he works that sets Brooke apart.

Brooke and his wife, Liz, have enjoyed a long and wonderful marriage and have raised three beautiful and accomplished children. Brooke is a well-rounded person with many interests. He is exceptionally well-read and well-informed. He has an engaging personality and excellent sense of humor. But, his honesty, integrity and sterling character stand out above all else.

I whole-heartedly recommend R. Brooke Jackson to you for appointment as the next Federal District Court judge for the United States District Court for the District of Colorado and respectfully request that his name be moved forward for consideration at the April 13 hearing of the Senate Judiciary Committee.

Very truly yours.

Maureen Reidy Witt

MRW:ko

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NOMINATION OF NANCY TORRESEN, OF MAINE, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MAINE; NANNETTE JOLIVETTE BROWN, OF LOUISIANA, NOMI-DISTRICT JUDGE FOR THE NEE TO BE EASTERN DISTRICT OF LOUISIANA; WIL-LIAM F. KUNTZ II, OF NEW YORK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK; HON. TIMOTHY M. CAIN, OF SOUTH CAROLINA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA; AND HON. **JOHN** ROSS. OF MISSOURI. NOMINEE TO BE DIS-TRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI

WEDNESDAY, MAY 4, 2011,

U.S. SENATE, COMMITTEE ON THE JUDICIARY, Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Christopher Coons, presiding.

Present: Senators Coons, Schumer, Grassley, and Graham.

Senator Coons. Good afternoon, everyone. I am pleased to call this nominations hearing of the Senate Committee on the Judiciary to order. I would like to welcome each of our nominees today and their families and friends to the U.S. Senate and congratulate them on their nominations. I would also like to welcome those of my colleagues who are here to introduce the respective nominees.

Today we welcome five nominees, beginning with Ms. Nancy Torresen, nominated to be judge in the District of Maine. Ms. Torresen currently serves as an Assistant U.S. Attorney in the Criminal Division of the U.S. Attorney's Office for the District of Maine. If confirmed, Ms. Torresen would be the first woman to serve as a Federal District Judge in Maine, and she will be introduced by her home State Senators, Senator Snowe and Senator

Next we welcome Ms. Nannette Brown, nominated to be a judge for the Eastern District of Louisiana. Ms. Brown currently serves as the city attorney for the city of New Orleans. If confirmed, she also will be the first African-American woman to serve as a Federal District Judge in Louisiana, and she will be introduced by her home State Senators, Senators Landrieu and Vitter.

We also welcome Dr. William Kuntz, nominated to be a judge in the Eastern District of New York. Dr. Kuntz is currently a partner at the law firm of Baker Hostetler in New York and will be intro-

duced by his home State Senator, Senator Schumer.

We would also like to welcome Hon. Timothy Cain, who has been nominated to be a judge in the District of South Carolina. Judge Cain currently serves as a family court judge for the Tenth Judicial Circuit of South Carolina, and he will be introduced by his home State Senator, Senator Graham.

Finally, we would like to welcome Honorable John Ross, nomi-

nated to be a judge in the Eastern District of Missouri.

Judge Ross currently serves as the presiding judge for the 21st Judicial Circuit of the State of Missouri. Perhaps that should be "Missour-ee." You can correct me either way, Senator.

[Laughter.]

Senator McCaskill. It is "Missour-ee" in St. Louis. Senator Coons. It is "Missour-ee" in St. Louis. He will be introduced by his home State Senator, Senator McCaskill, and perhaps Senator Blunt may join us as well.

Given the large number of U.S. Senators from the respective home States of the nominees, I will hold off on my opening statement. Senator Grassley, when he joins us, may also have an open-

ing statement, which he is welcome to make at that time.

And I would like to thank all of the Senators who have come to speak on behalf of their home State nominees this afternoon. I know well how incredibly busy you are, but your presence and support speaks volumes about their qualifications, and I will invite each of the Senators, if you so desire, to excuse yourselves after you speak in introduction of your home State nominees.

So, first, we will proceed to hear from the Senators from the State of Maine to introduce Ms. Torresen. Senator Snowe, please

proceed.

PRESENTATION OF NANCY TORRESEN, NOMINEE TO BE DIS-TRICT JUDGE FOR THE DISTRICT OF MAINE, BY HON. OLYM-PIA J. SNOWE, A U.S. SENATOR FROM THE STATE OF MAINE

Senator Snowe. Thank you, Mr. Chairman, and thank you for giving us this opportunity. I am please to join my colleague Senator Collins in recommending to the Committee Nancy Torresen as the President's nominee for the United States District Court for the District of Maine. I have had the pleasure of meeting with Nancy earlier this week, and she is a consummate professional and supremely qualified.

Coincidentally, I also happen to know her husband, Jay McCloskey, who is a former classmate of mine from the University of Maine, where we were good friends, and I cannot help but note that he, too, was confirmed by the U.S. Senate in 1993 as U.S. Attorney for Maine. So together as well as individually, they are quite a powerhouse in the Maine legal community, not to mention a cou-

ple that never will be labeled as "underachievers."

Mr. Chairman, Maine has one judicial district with three active judgeships. If confirmed, Ms. Torresen will become only the 17th judge to serve on our United States District Court over its 222-year history. Significantly, she would also be the first woman to serve on the court, as you mentioned-a watershed moment for our States. Ms. Torresen would take the seat of Judge Brock Hornby, who has served our State with the highest of distinction for 21 years. Indeed, just over a year ago, Judge Hornby received the Devitt Award, a singular honor given annually for the last 29 years to the outstanding Federal judge in the Nation. We are all indebted to Judge Hornby for his unparalleled service.

Ms. Torresen brings a critical depth and breadth of experience to this nomination as she has practiced law for 24 years across a range of roles and responsibilities. She began her career as a law clerk to Chief Judge Conrad Cyr of the United States District Court. After 2 years with a well-known law firm here in Washington, Williams & Connolly, she returned to Maine for a career as a prosecutor. All told, Ms. Torresen has served 14 years as an Assistant United States Attorney and 7 years as an Assistant State Attorney General. The variety of positions she has held and the facets of the legal realm in which she has practiced are significant

and would be multiple perspectives in the district court.

As an Assistant United States Attorney, Ms. Torresen has worked 4 years in the Civil Division and 10 years in the Criminal Division. Her civil practice has included contract disputes, medical malpractice, and libel. Her criminal practice has included white-collar crime cases, such as tax evasion and contract fraud. In her extensive criminal practice as an Assistant United States Attorney, Ms. Torresen has been hands-on, handling everything from initial referral of a case through post-conviction relief. That is the kind of real-world experience that underscore her ability and her credibility on the bench.

As an Assistant State Attorney General, Ms. Torresen worked in the Appellate Section of the Criminal Division. There she represented Maine in the appeals of violent crime convictions. She wrote 16 appeals, briefed 12 habeas corpus cases, and argued nine murder cases. Ms. Torresen also served as an assistant to the Advi-

sory Committee on the Maine Rules of Civil Procedure.

Ultimately, Ms. Torresen will bring to the bench a diversity of trial and appellate experience before Maine's Federal magistrate and our district and appellate judges. She would also bring to bear the academic distinctions of having served as executive editor of the University of Michigan Law Review as well as the professional honor of receiving a unanimous well-qualified rating from the American Bar Association. I am confident that Nancy Torresen will serve the people of Maine and our Nation with integrity and excellence, and should she be confirmed, as I hope she will be, Nancy and Jay's three children undoubtedly will be extremely proud of their parents that not just one but both of them will have the U.S. Senate endorsement.

Thank you, Mr. Chairman, and I look forward to the Committee's favorable review of Ms. Torresen's nomination.

Senator Coons. Thank you, Senator Snowe.

Senator Collins.

PRESENTATION OF NANCY TORRESEN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MAINE, BY HON. SUSAN M. COLLINS, A U.S. SENATOR FROM THE STATE OF MAINE

Senator Collins. Thank you, Mr. Chairman, and thank you for the courtesy in allowing us to proceed with our statements. Before I give my formal remarks, I just have to remark on the fact that it is wonderful to have two women Senators introducing the woman who has been nominated to be the first female to be a Federal District Judge in Maine. In Nancy we get it right on the appropriate ratios.

It is a great honor to appear before this distinguished Committee to encourage the confirmation of Nancy Torresen. She is eminently well qualified to be confirmed as U.S. District Judge for Maine. Ms. Torresen has led an exemplary career of public service, culminating in her current position as an Assistant U.S. Attorney. Let me tell you a little more about her background to supplement what my colleague Senator Snowe has already told you.

Ms. Torresen graduated from Hope College cum laude with a B.A. in 1981 and received her law degree cum laude in 1987 from the University of Michigan Law School, where she served as execu-

tive editor of the Law Review.

After graduation, she came to Maine to serve as a law clerk to the extraordinarily well respected Judge Conrad Cyr. From 1988 to 1990, she worked at the law firm that is well known in this city of Williams & Connolly. In 1990, she had the good judgment to return to Maine where she became an Assistant U.S. Attorney for the District of Maine and initially handled civil matters involving Federal agencies.

In 1994, she was assigned to the Appellate Section of the Criminal Division of the Maine Attorney General's office where she was primarily responsible for representing the State of Maine in ap-

peals of serious violent crime convictions.

In 2001, Ms. Torresen returned to the U.S. Attorney's Office where she has been responsible for investigating and prosecuting Federal crimes in the northern half of our State.

In conversations with Ms. Torresen, I was impressed by her dedication and passion for the law. I also appreciate her 21-year-long commitment to public service. She has remarked that she is proudest of her criminal prosecution efforts because of the urgent need to protect the public from violent criminals and her desire not to let down the victims of violent crime.

One of her most significant cases recently was the prosecution of a multi-state bank robber dubbed "The Burly Bandit." This got a great deal of publicity in Maine. From April through July, Robert Ferguson robbed more than ten banks and credit unions throughout New England. The spree ended with a robbery of Bangor Savings Bank in July, and on October 1st of last year, Mr. Ferguson pleaded guilty in U.S. District Court in Bangor to 11 counts of bank robbery. Ms. Torresen was recognized by our U.S. Attorney for her outstanding work in coordinating the prosecution in six States.

Except for her brief stint in the private sector, Ms. Torresen's entire career has been that of a dedicated public servant. She is very well respected in the legal community, and as Senator Snowe men-

tioned, she has been rated as unanimous well qualified by the American Bar Association.

But I want to share with the Committee my conversations with members of the legal community in the State of Maine. One of them was with Tim Woodcock, who is a well-known attorney in Bangor, and his comments were very typical of what I heard when I called and asked people what they thought of Ms. Torresen. Tim said that he regards her as "highly professional, extremely capable, tough but fair, and a strong advocate for the adherence by law enforcement to all legal requirements." These are all qualities that we should look for in our judicial nominees.

Ms. Torresen's work as a prosecutor in both the Federal and State judicial systems, her integrity, her temperament, and her respect for precedent make her well qualified to serve as Maine's next Federal judge. Maine has a long and proud history of superb Federal judges, and I believe that Nancy Torresen will continue that tradition, if confirmed.

Thank you very much for the opportunity to appear before your Committee.

Senator Coons. Thank you very much, Senator Collins and Senator Snowe.

I have received a request from my colleague on the Committee, Senator Schumer, to be able to speak on behalf of his home State nominee, Dr. Kuntz, given other commitments he has. With the forbearance of our three other colleagues who are also here to introduce their home State nominees, I will proceed to defer to Senator Schumer.

PRESENTATION OF WILLIAM F. KUNTZ II, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK, BY HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator Schumer. Well, thank you, and I know my colleagues are waiting. I apologize for being late. I will ask that my entire statement be read in the record and just be very brief.

First, it is an honor to introduce Dr. William F. Kuntz II, to the Committee today. I have nominated a lot of people to the bench. This guy's credentials are just incredible. He grew up in the projects called "The Polo Ground Projects," went to Harvard College and has actually four degrees from Harvard—I hope you will not hold that against him—undergraduate, master's degree in history, law degree, and a Ph.D. in American legal history. He then went and spent 33 years as a litigation leader in one of New York's finest law firms, Baker & Hostetler.

And what impressed me the most—and there were many things—he served 23 years on the Civilian Complaint Review Board. That is where citizens bring complaints about police officers. It is a hotbed. It is like serving on the Ethics Committee here, but much worse. No one wants to do it, and someone has to do it. He was respected by both sides—the people complaining and the police. He was moderate, he was thoughtful, and he did everything that was fact based. And he stayed on 23 years and is looked to by everyone in New York as the expert on this issue.

When in private practice, one of the things he did was recover money from those who steered clients to Bernie Madoff. He has been part of the Legal Aid Society, the Practicing Law Institute, and he is also-two other points, and then I will yield to my colleagues. He is one of the nicest people you would ever want to meet. He is just a fine human being, sort of well respected, beloved in certain circles in New York. And the only other two things I would say to my colleagues, he is a true moderate. I try to nominate people not from the far right and not from the far left, because they both try to make law rather than follow the law. And, second, the Eastern District of New York, my home district, on which he would serve, is a judicial emergency district. In other words, we are desperately short of judges on that. I would ask unanimous consent that my entire statement be read in the record. I thank my colleagues or their indulgence and congratulate Mr. Kuntz on his nomination, and I am hopeful we can have a speedy confirmation process for you, sir.

Senator COONS. Without objection.

The prepared statement of Senator Schumer appears as a submission for the for record]

Senator Coons. Thank you, Senator Schumer, for those comments on behalf of Dr. Kuntz.

We will now proceed to the Senators from Louisiana, who will be speaking by way of introduction on behalf of Ms. Brown. Senator Landrieu.

PRESENTATION OF NANNETTE JOLIVETTE BROWN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA, BY HON. MARY L. LANDRIEU, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator Landrieu. Thank you, Mr. Chairman and distinguished members of this panel. It is with great pleasure and pride that I present to you today Mrs. Nannette Jolivette Brown, a nominee for judge in the Eastern District of Louisiana. I was extremely pleased to submit her name for consideration to President Barack Obama for this appointment.

Mrs. Brown is joined today by her very supportive husband, Marcus Brown, and her two very proud children—Christopher Dylan and Rachel—and they are all with her today in this room.

Mrs. Jolivette Brown has rightfully garnered the support of both of her home State Senators, and I am so pleased to be joined by my colleague Senator Vitter in support of this nominee.

Mrs. Brown is equipped with a remarkable array of legal experiences, Mr. Chairman, which range from law professor to legal litigator and mediator for one of the most established and well-respected law firms in our State. She has also held several high-level positions with the city of New Orleans, having first been appointed only at the age of 30 to head one of our departments and now serves as city administrator, city attorney for the city of New Orleans.

Her life has been committed to justice and fairness, and her own personal experiences have dictated a great deal about the way she operates, the way she thinks, her heart for justice and compassion. Nannette Brown grew up at a time, sadly, in Louisiana's history where she and her younger brothers literally had to sit at the back of the bus as those buses made their way through the city of New Orleans. So she brings with her to this bench not only a commitment to justice learned in the classrooms and learned along the way in her career, but a real heartfelt commitment to the indignities suffered when the law is not where it needs to be.

After putting herself through college and law school, one of the country's most prestigious firms, as I said, Adams & Reese, immediately hired her. She made a quick name for herself as a com-

petent and energetic young attorney.

She has earned an L.L.M. in energy and environmental law from Tulane as well as mediation certificates from both Loyola and Harvard. These advanced degrees, in addition to the decades of practical experience, her own life experience, numerous articles that she has published have promoted her, and she is understood to be one of the leading figures in our legal community. She has also, Mr. Chairman, served as professor of law at Southern University, Loyola Law School, and Tulane, among many other subjects that she taught, Federal Civil Procedure.

I must also say outside of the classroom she exemplifies leader-ship and compassion as well. Outside of the courtroom, she exemplifies, and outside of the legal community. After Katrina, which I think is very telling, when all of us were busy getting our own lives and families back together, Nannette and her family were in Houston. She had a lot to do with getting her own family situated. But as Nannette would, she found a way to put others ahead of herself. Within a few short months, she had not only joined the Big Brothers and Big Sisters organization of Houston, but she was spearheading that organization's effort to mentor children who had been displaced from New Orleans so that they could get their way more secure and find a way home more carefully.

So on behalf of so many people from the city of New Orleans, the State of Louisiana, from her many professors, her many friends, her many peers that she served with in the legal community, it is absolutely my pride and joy to present her to this Committee.

I want you all to know in closing that, should your Committee give her your approval and she move on to the Senate for confirmation, Nannette will become the first African-American woman to ever serve as an Article III judge in Louisiana's history. It is a fitting achievement for someone who has devoted so much to equal protection and application of the law.

Senator COONS. Thank you, Senator Landrieu.

Senator Vitter.

PRESENTATION OF NANNETTE JOLIVETTEBROWN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA, BY HON. DAVID VITTER, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator VITTER. Thank you, Mr. Chairman and members, and I am very pleased to join Senator Landrieu in introducing and strongly supporting Nannette Jolivette Brown for this position on the Eastern District Court of Louisiana, and it is a real honor for me and it is a great personal pleasure for me. Ms. Brown and I

were classmates at Tulane Law School. We both got our J.D. there. But she went further. She also got her L.L.M. at Tulane, specializing in energy and environmental law, as Senator Landrieu mentioned.

She has a wealth of background and experience and expertise that she will bring to this job. Of course, right now, as was mentioned, she is city attorney for New Orleans. It is a very wide-ranging, very challenging position, basically the top lawyer for all city issues. She has done a number of things, including mediate over 100 cases, for instance, right after Hurricanes Katrina and Rita as part of the Louisiana Hurricane Mediation Program. She is a real expert in environmental law in particular, with an advanced degree in that. She has taught, as Senator Landrieu said, a number of places: Loyola Law School, Southern Law Center, and she was a teaching fellow at Tulane Law School.

So she does bring a real wealth of public and private sector experience to the Federal bench. She also brings a great deal of common sense, a wonderful, warm, calm personality that will be perfectly suited to the right demeanor a judge should have. And so it is a real pleasure for me to help introduce her and to strongly support her confirmation.

Thank you, Mr. Chairman.

Senator Coons. Thank you, Senator, and thank you,

Senator Landrieu.

Now I would like to invite Senator McCaskill to introduce Judge Ross from Missouri.

PRESENTATION OF HON. JOHN A. ROSS, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI, BY HON. CLAIRE McCASKILL, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator McCaskill. Thank you, Mr. Chairman, and my thanks to the Committee for holding this hearing today so these important nominees can move forward in our process.

It is my pleasure today to introduce to the Committee John Ross, and I have a bias, and my bias is that there are people who choose to labor in the field of public service as it relates to the law, and that many times they are overlooked in terms of their skill and their ability to administer justice in our country, especially at the Federal level. So my bias is showing today because of who John Ross is and what he has accomplished.

John Ross graduated from law school in the late 1970's and very quickly moved into a job where he was an assistant prosecutor, an assistant prosecutor at the State level. And, once again, I have a bias, and my bias is that State-level prosecutors do not get to pick which cases they handle. They respond to 911 calls, and they take all cases. They do not get to decide that their time is only worthy of a certain kind of case. And John Ross worked his way up in the largest prosecutor's office in the State at that time, in St. Louis County, eventually becoming the chief trial attorney in that office.

This is a man who has tried more than 50 jury trials in his career. In my humble opinion, there is no better place to learn how to be a good judge than in the courtroom. And in the courtroom, you get to see lots of different judges in a very up close and per-

sonal way because you are in the trenches actually trying those cases week in and week out. And you learn about judicial demeanor. You learn about judges that get robe-itis, that all of a sudden decide that their judgment cannot be questioned and that they do not have time to listen carefully, not just to the lawyers in front of them, but to the witnesses and to the plaintiffs and to the defendants. And it is, I think, that experience that uniquely qualifies John Ross to take this important position on our Federal bench.

He was selected to join the State bench, and for 11 years he has been a circuit judge in the busiest circuit in Missouri. And we have a system in Missouri where judges are reviewed by the lawyers, and this is done anonymously so it is pretty darn accurate. And the judges that get these surveys from the lawyers always wait with bated breath as to how the lawyers are going to rate them.

John Ross always gets if not the highest, one of the very highest ratings in St. Louis Circuit Court because of the way he handles his courtroom, because of the way he respects the lawyers, because of his fairness, because of his love of the law and his ability to not only just administer justice but really work at it—I mean, really, really work at it. And so since 2009 he has, in fact, been the presiding judge of the busiest circuit in the State of Missouri.

So it is that background that qualifies him to take the Federal bench, a trial bench, where he will draw upon more than a decade of service as a State trial judge, more than a decade of service trying probably more jury trials than 95 percent of these nominations that come in front of this Committee. And I think that is more important, frankly, than his degree, although his degree is from a great university, Emory University, both his undergraduate and law degree, and I think in many ways more important than many of the other qualifications that are sometimes emphasized in these hearings.

He also is very active in the community and particularly in the area of family violence and shelters for battered women. He has also been very active in raising money for a charity that many of us are very partial to because it honors a man who served as an elected official in St. Louis County for many years who was struck down very young in his life and who John had the honor of working for in St. Louis when he ran the county counselor's office for Buzz Westfall, who is the former county executive.

So I think he is going to be one terrific Federal judge. I highly recommend him to you. I think he will be the kind of judge that all lawyers will look forward to working in front of and that all of us will be proud of for many years to come.

Thank you, Mr. Chairman, and thank you for the time of the

Senator Coons. Thank you very much, Senator McCaskill.

Next we will turn to the Senator from South Carolina, who will introduce to the Committee Judge Cain.

Senator Graham.

PRESENTATION OF HON. TIMOTHY M. CAIN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA. BY HON. LINDSEY GRAHAM, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator Graham. Thank you, Mr. Chairman.

Senator McCaskill has a bias. I have a big one. Tim used to be my law partner.

[Laughter.]

Senator Graham. And I hope he can get confirmed in spite of that. He has been a family court judge for 11 years, I think. And you talk about the ability to make hard decisions fairly quickly. That is the ultimate legal experience, I think, is to be a family court judge sitting over child custody cases, dealing with abused children complaints, trying to be fair when it comes to the economic equities of a marriage that is broken. You really meet the human condition in family court in every way possible. And how he did this for 11 years I will never know. He is a far better man than I am, and let me tell you, I think most people in South Carolina would say that Tim Cain is one of the best lawyers and judges we have ever produced.

His wife, Renee, is a social worker, also a very dear friend. She has seen a tough side of life. So we are going to have a man go on the bench in South Carolina, I hope, who has seen just about everything you could see, and he has tried to be as fair as possible. And what more contentious issue than deciding who gets a child? Every lawyer almost without exception would tell you that he did

his job in the most outstanding fashion.

He was a city attorney and he was a county attorney, so he understands local government issues and how it is to advise politicians, which I would not wish on anybody, legally. He has been an assistant prosecutor and an assistant public defender. So he has sat on both sides. He understands what it is like to defend somebody, and he also understands what it is like to represent a victim

He was chosen by our Supreme Court Chief Justice, Jean Toal, to sit on our Supreme Court for a period of time when an opening became available, which I think spoke volumes—which I believe

speaks volumes about Tim's legal ability and respect.

He was qualified by the ABA without exception. His son, Martin, got a new suit for this hearing. We went to dinner last night, got a new sports jacket, so this was good for the economy, Mr. Chairman.

[Laughter.]

Senator Graham. And I want to thank President Obama. He certainly did not have to do this. And Tim will be not a Republican judge and not a Democratic judge. He will be a lawyer's judge. I think he will administer justice at the Federal level in a way that we could all be proud of, and we have a strong tradition in South Carolina of putting qualified people on the bench no matter what party is in power. And we are going to continue that tradition with Tim Cain, literally one of the nicest people I have ever met in my life. And when this job is over, as a Senator there are a lot of things you can look back on, hopefully to be proud of, and some mistakes we will all make, but I can tell you without any doubt one

of the proudest moments I have had being a U.S. Senator from South Carolina is getting to introduce Tim and recommending him to the President and hopefully getting the vote on the floor of the Senate soon for his confirmation.

Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator. I would like to thank all of the home State Senators who have spoken on behalf of our five nominees today.

Before we proceed to the testimony, I will take a moment for an opening statement and then invite Senator Grassley as well.

STATEMENT OF HON. CHRISTOPHER COONS, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator COONS. I would just like to take a moment and note that so far in the 112th Congress the Senate has indeed increased the pace at which district court nominees are being confirmed. Through bipartisan cooperation over the last several months, we have been able to achieve a modest but significant reduction in the overall

number of judicial vacancies.

More work does remain to be done. Ten percent of Federal judgeships still sit vacant; 37 of these are considered judicial emergencies, vacancies that have lasted more than 18 months and have caused other judges on the same courts to take on an overly burdensome caseload. And today Attorney General Holder testified before this very Committee that the number and duration of vacancies has created a crisis in our Federal courts. This is not a partisan issue. Chief Justice Roberts has similarly noted that the prolonged vacancies are causing acute difficulties for some judicial districts.

The Senate as a body can help alleviate this crisis by acting on, I believe, 44 judicial nominations that have been referred to us, and the majority are wholly noncontroversial and should be con-

firmed as promptly as possible.

I am disheartened, however, today that the Senate stands poised to spend 30 hours over the coming days engaged in a protracted post-cloture debate regarding the nomination of one U.S. district court judge, Jack McConnell, nominated for the District of Rhode Island. To have to file cloture on a district court nominee with the unanimous support of his home State Senators is nearly unprecedented. In fact, research by my staff shows only three cloture petitions have ever been filed for district court nominees. Democrats did not filibuster a single nominee to the district court during President Bush's administration, and my real hope is that the acrimony concerning Mr. McConnell is just a bump in the road and does not signal any escalation of the partisan rancor surrounding judicial nominees that may have characterized previous Con-

The five nominees sitting before us today are, as we have heard from their home State Senators, outstanding qualified nominees, and they certainly deserve a prompt and thorough consideration. I look forward to continuing the great progress we have made by working with Chairman Leahy, Ranking Member Grassley, and my fellow Judiciary Committee members to consider these nominees in

a thorough and expeditious manner.

Senator Grassley.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator Grassley. Thank you, Mr. Chairman.

In the first few months that I have been Ranking Member of the Judiciary Committee, as you just stated, we have worked in good faith together to forward consensus nominees. As I said a couple of days ago, by any fair measure we are moving nominees at a brisk pace. The Senate has been in session only 44 days this Congress, and in that short period of time, we have confirmed 19 judges. In fact, thus far we have taken positive action on 43 of 63 nominees submitted to the Congress. I want to emphasize that we have taken positive action, in a percentage form, on 68 percent of the judicial nominees to the Congress. And I do not have any reason to believe at this point, unless something comes up that I do not know about, that these will be controversial that we are hearing from today. So I am glad to welcome the nominees appearing before us today.

Each of them are nominated to be a District Judge. Of course, you all have family and friends that you are proud of, and we welcome them as well. Your qualifications and backgrounds have been thoroughly vetted and reviewed. Today is when the public gets the opportunity to hear from you directly. So, of course, I welcome you all and look forward to your testimony.

I have a longer statement I am going to insert in the record.

Senator Coons. Without objection.

Senator Grassley. Thank you. [The prepared statement of Senator Grassley appears as a submission for the for record.]

Senator Coons. Thank you very much, Senator.

Now I would like to ask the five nominees to step forward and please remain standing at your places. If you would please raise your right hands and repeat after me. Do you solemnly swear that the testimony you are about to give to the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge Ross. I do. Judge CAIN. I do.

Ms. JOLIVETTE BROWN. I do.

Ms. Torresen. I do.

Mr. Kuntz. I do.

Senator Coons. Thank you, and let the record show the nominees have been duly sworn and taken the oath, and please be seat-

And now each of the five nominees will in turn have an opportunity to recognize their family and friends and to give an opening statement.

Ms. Torresen, starting with you, I welcome you to acknowledge family members or friends you have here today and then to offer your opening statement. Ms. Torresen.

STATEMENT OF NANCY TORRESEN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MAINE

Ms. TORRESEN. Thank you, Senator Coons.

I want to thank Senator Coons and Senator Grassley for convening this hearing today. I want to thank President Obama for nominating me for this position, and I would like to thank particularly Senators Snowe and Collins for their very kind introductions.

And I would like to introduce my family to you.

Right behind me is my husband, Jay McCloskey, and then my daughter is here, Abby McCloskey, behind him. My niece is next to her, AnneMarie Torresen. Beyond those two in the third row is my mother, Frances Torresen, and my brother, David Torresen. And in the back there is my brother, Robert Torresen as well. I know my father, who is deceased, is with us in spirit, and I also have two children at home, Jack McCloskey and Lilly McCloskey, who could not make it today because of school commitments. But I am sure they are with us in spirit as well.

I have no opening statement, and I would be happy to answer any questions that you have.

[The biographical information of Ms. Torresen follows:]

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

Nancy Torresen Nancy Torresen Hammar

2. Position: State the position for which you have been nominated.

United States District Judge for the District of Maine

 Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Attorney's Office 202 Harlow Street, Room 111 Bangor, Maine 04401

4. Birthplace: State year and place of birth.

1959; Ridgewood, New Jersey

 Education: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1984 – 1987, University of Michigan Law School, J.D. (cum laude), 1987 1977 – 1981, Hope College, B.A. (cum laude), 1981

6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2001 - Present
United States Attorney's Office for the District of Maine
202 Harlow Street, Room 111
Bangor, Maine 04401
Assistant United States Attorney Assigned to the Criminal Division

1994 – 2001
Maine Department of the Attorney General
State House Station 6
Augusta, Maine 04444
Assistant Attorney General Assigned to the Criminal Division, Appellate Section
(Assistant United States Attorney Assigned to the Maine Department of the Attorney General)

1990 – 1994
United States Attorney's Office for the District of Maine
99 Franklin Street
Second Floor
Bangor, Maine 04401
Assistant United States Attorney Assigned to the Civil Division
(After my first child was born in 1991 – prior to passage of the Family Medical Leave
Act – I resigned my position for ten months and was rehired in July of 1992.)

1988 – 1990 Williams and Connolly 725 Twelfth Street, NW Washington, D.C. 20005 Associate

1987 – 1988 Honorable Conrad K. Cyr 202 Harlow Street Bangor, Maine 04401 Judicial Clerk

Summer 1986 Williams and Connolly 725 Twelfth Street, NW Washington, D.C. 20005 Summer Associate

Summer 1985 Jaffe, Snider, Raitt & Heuer 1800 First National Building Detroit, Michigan 48226 Summer Associate 1982 – 1984 Association for Child Development 139 Lake Lansing Road, Suite 120 East Lansing, Michigan 48823 Administrative Assistant

1981 – 1982 Midland Daily News 124 MacDonald Street Midland, Michigan 48640 Reporter (free lance; part-time)

1981 - 1982 Bay City Foundry 2611 Center Street Bay City, Michigan 48707 Sales Correspondent

Summer 1981 CoroTech, Incorporated 17181 Taft Street Spring Lake, Michigan 49456 Office Manager

Other Affiliations

2006 – 2009 Mabel Wadsworth Women's Health Center 700 Mount Hope Avenue, Suite 420 Bangor, Maine 04401 Member, Board of Directors

Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

I have not served in the military. I have not registered for selective service.

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

United States Department of Agriculture, Office of Inspector General, Award of Excellence (2006)

Executive Editor of the University of Michigan Law Review (1986 - 1987)

Howard B. Coblentz Prize (1986 – 1987)
Associate Editor of University of Michigan Law Review (1985 – 1986)
Bodman Longley Award (1985 – 1986)
Writing and Advocacy Certificate of Merit
Member of Mortarboard Society at Hope College
Member of Psi Chi – Psychology Honors Society at Hope College

9. <u>Bar Associations</u>: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Advisory Committee on the Maine Rules of Civil Procedure
Special assistant on the drafting of Rule 66 of the Maine Rules of Civil Procedure
and Rule 42 of the Maine Rules of Criminal Procedure (1996)

John Waldo Ballou American Inns of Court
Maine Bar Association

National Association of Assistant United States Attorneys
Delegate from Maine (2007 – 2009)

Penobscot County Bar Association

10. Bar and Court Admission:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Michigan, 1988. I have never practiced in Michigan and my license is inactive there.

District of Columbia, 1989. I resigned this membership after I joined the Maine

Maine, 1993. There have been no lapses in my membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the First Circuit, 1998 United States District Court for the District of Maine, 1990 Courts of the State of Maine, 1993 District of Columbia Court of Appeals, 1989 Courts of the State of Michigan, 1988 I assume that my admission in the courts of the State of Michigan and the District of Columbia have lapsed since my memberships in their respective bars are now inactive. Otherwise, there have been no lapses in membership.

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Bangor Parks and Recreation, Soccer Coach (1997 – 2004)
Bangor Public Schools, Parent Teacher Organization (1996 – 2007)
Lucerne Beach Club (1997 – present)
Mabel Wadsworth Women's Health Center Development Committee (2005)
Penobscot Valley Country Club (2004 & 2006)
Penobscot Theater Company (1987 – 1988)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of the organizations listed in response to 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Critical of YWCA, Letter to the Editor in Bangor Daily News, Apr. 27, 1995. Copy supplied.

Book Note, 84 U. Mich. L. Rev. 974 (1986). Copy supplied.

Fixing Old Fashioned Feast Takes Energy, Experience, Organization, Midland Daily News, Nov. 26, 1981, at 3. Copy supplied.

Epilepsy Misunderstood, Midland Daily News, Nov. 25, 1981, at 8. Copy supplied.

Organists Play Supporting Role, Midland Daily News, Nov. 21, 1981 at 9. Copy supplied.

Women Should Review and Update Credit Rating, Midland Daily News, Nov. 6, 1981, at 6. Copy supplied.

Multinational Companies Study Results Presented, Midland Daily News [date unavailable] at 8. Copy supplied.

Friendliness, Openness Part of the Lifestyle in Beaverton, Midland Daily News, [date unavailable]. Copy supplied.

Pianist-Teacher Enjoys her Life, Midland Daily News, [date unavailable]. Copy supplied.

New Chaplain Interviewed, Hope College Anchor, Feb. 8, 1979. I have been unable to obtain a copy of this article.

Van Heest Gets Committee's Nod, Hope College Anchor, Dec. 1, 1978, at 1. Copy supplied.

High Schoolers Simulate Hope United Nations, Hope College Anchor [date unavailable]. Copy supplied.

Joffrey Says Yes: Rahn and Riffel Create 'Ritual', Hope College Anchor [date unavailable]. Copy supplied.

Commentary: House Losses Cause of Commotion, Hope College Anchor [date unavailable]. Copy supplied.

New PR Film Shows Signs of Hope, Hope College Anchor [date unavailable]. Partial copy supplied.

Out and Back Again: Student Treks Evaluated, Hope College Anchor [date unavailable]. Copy supplied.

From May to You: Education Abroad, Hope College Anchor, [date and unavailable]. Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Juvenile Crime, Drug Abuse, Domestic & Sexual Violence and Hate Crimes in Maine, A Report of the Anti-Crime, Anti-Violence Advisory Committee to Congressman John E. Baldacci, April 1997. Although I was not a member of the Committee, I attended public hearings and private sessions of the Committee and prepared a report which contained summaries of the testimony heard by the committee and recommendations of the committee. A copy of that report is supplied.

Advisory Committee on the Maine Rules of Civil Procedure, Special assistant on the drafting of Rule 66 of the Maine Rules of Civil Procedure and Rule 42 of the Maine Rules of Criminal Procedure, 1996. I have been unable to obtain copies of the drafts of those rules submitted during my tenure on the committee, but have supplied copies of the rules as they exist currently.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have not testified or made any official statements or other communications relating to matters of public policy or legal interpretations to public bodies or public officials.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have not given any speeches or talks.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

As a general rule, during my career at the United States Attorney's Office, I have not spoken with the press. On a few occasions, I have spoken with a reporter outside the courtroom.

On October 1, 2010, I participated in a press conference with the United States Attorney about a serial bank robber. While I do not have a transcript or recording, I was quoted by some of the media outlets that attended the press conference and others picked up the story. Most of the articles tracked an AP story which quoted me. I have supplied the AP story and any additional articles that I could find which contained a different quote than that used by the AP article. These articles are listed below:

Dawn Gagnon, 'Burly Bandit' Pleads Guilty to 11 Bank Heists, Bangor Daily News, Oct. 2, 2010. Copy supplied.

David Hench, 'Burly Bandit' Faces Prison After Plea to 11 Bank Robberies, Portland Press Herald, Oct. 2, 2010. Copy supplied.

Dan Herbeck, 'Burly Bandit' Pleads Guilty in Maine to 11 Holdups, Buffalo News, Oct. 2, 2010. Copy supplied.

David Sharp, 'Burly Bandit' Pleads Guilty to 11 Robberies, Associated Press, Oct. 1, 2010. Copy supplied.

Listed below are additional articles quoting comments that I believe were made outside the courtroom.

Jason Schreiber, Burly Bandit Gets 10 Years for Multi-State Robbery Spree, Union Leader, Feb. 25, 2011. Copy supplied.

Eric Russell, Jonesport Woman Who Embezzled \$30K from Union Sentenced, Bangor Daily News, Feb. 24, 2011. Copy supplied.

Judy Harrison, Man Gets Jail in Illegal Aliens Case, Bangor Daily News, Mar. 3, 2010. Copy supplied.

Judy Harrison, Hampden Child Pornographer Faces Supervised Release for Life, Bangor Daily News, Sept. 13, 2006. Copy supplied.

Doug Harlow, Man Gets 3 Years for Possessing Shotgun, Morning Sentinel, Mar. 28, 2006. Copy supplied.

Judy Harrison, Two Indicted in Robbery of Skowhegan Pharmacy, Bangor Daily News, Aug. 8, 2003. Copy supplied.

Darla L. Pickett, Pair Indicted in Armed Robbery, Morning Sentinel, Aug. 8, 2003. Copy supplied.

Bangor Man in Court on Child Porn Charges, Bangor Daily News, Jan. 30, 2002. Copy supplied.

Debra Sund, Court Denies Appeal in Stabbing Death, Bangor Daily News, Nov. 1, 2000. Copy supplied.

John S. Day, Jumbled Memories of a Shrinking Male Brain, Bangor Daily News, Oct. 17, 1996. Copy supplied.

Patricia Harper's Conviction Upheld; Request for Third Murder Trial Denied, Bangor Daily News, Feb. 28, 1996. Copy supplied.

Rick Levasseur, 'Guys and Dolls' a Community Affair, Bangor Daily News, Oct. 23, 1987. Copy available at http://news.google.com/newspapers?id=aqdJAAAAIBAJ&sjid=DA4NAAAAIBAJ&sjid=DA4NAAAAIBAJ&sjid=DA4NAAAAIBAJ&sjid=DA4NAAAAIBAJ&sjid=DA4NAAAAIBAJ&sjid=DA4NAAAAIBAJ&sjid=DA4NAAIBAJ&sjid=DA4NAAIBAJ&sjid=DA4NAAIBAJ&sjid=DA4NAAIBAJ&sjid=DA4NAAIBAJ&sjid=DA4NAAIBAJ&sjid=DA4NAAIBAJ&sjid=DA4NAAIBAJ&sjid=DA4NAAIBAJ&sjid=DA4

13. <u>Judicial Office</u>: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not served as a judge.

a.	Approxi or judgn	mately how many cases have you presided over that have gone to verdict nent?
	i.	Of these, approximately what percent were:

jury trials: ____%
bench trials: ____%

civil proceedings: _____%

criminal proceedings: _____%

- Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
- 14. <u>Recusal:</u> If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant
 or a party to the proceeding or by any other person or interested party; or if you
 recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held public office. I have never run for any elective office. I have never been nominated to any appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a paid position in a political party or election committee. I served very briefly as a local treasurer for Pamela Chase, a candidate to the Maine House of Representatives in 1992. I resigned the post when I returned to work at the United States Attorney's Office in July of 1992. In 1994, my name appeared in an advertisement along with many others as individuals who supported Joe Brennan for Governor of Maine.

16. Legal Carcer: Answer each part separately.

- Describe chronologically your law practice and legal experience after graduation from law school including:
 - whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1987 to 1988, I served as a law clerk to the Honorable Conrad K. Cyr who at the time was Chief Judge of the United States District Court for the District of Maine.

- ii. whether you practiced alone, and if so, the addresses and dates;
 - I have never practiced alone.
- the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1988 – 1990 Williams and Connolly 725 Twelfth Street, NW Washington, D.C. 20005 Associate

1990 – 1994 United States Attorney's Office for the District of Maine 202 Harlow Street, Room 111 Bangor, Maine 04401 Assistant United States Attorney Assigned to the Civil Division

Maine Department of the Attorney General
State House Station 6
Augusta, Maine 04444
Assistant Attorney General Assigned to the Criminal Division, Appellate
Section (Assistant United States Attorney Assigned to the Maine
Department of the Attorney General)

2001 – present
United States Attorney's Office for the District of Maine
202 Harlow Street, Room 111
Bangor, Maine 04401
Assistant United States Attorney Assigned to the Criminal Division

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

 the general character of your law practice and indicate by date when its character has changed over the years.

From 1988 to 1990, I worked as an associate with Williams and Connolly. I was responsible for both civil and criminal matters. My civil practice included medical malpractice, libel, and contract dispute cases. My criminal practice involved white collar cases, including government contract fraud, tax evasion, and regulatory fraud.

From 1990 to present, I have been an Assistant United States Attorney. My career over the last twenty years can be divided into three distinct periods—the civil years, the appellate years and the criminal years.

Throughout this time, I have always been involved in litigation, but it has taken place in different courts for different reasons.

In the early 1990s, I was assigned to the civil division of the United States Attorney's Office in Maine litigating civil cases involving federal agencies. I defended the Veteran's Administration in medical malpractice matters and defended other federal agencies in personal injury and employment discrimination cases. I handled affirmative civil actions for regulatory agencies, such as the FDA, and I brought a civil suit against a German citizen for interfering with a flight crew. I also protected federal interests in bankruptcy cases.

From 1994 to 2001, I was designated by the Justice Department to the Maine Department of the Attorney General, Criminal Division, Appellate Section. With the Maine Attorney General's office, I was primarily responsible for representing the State of Maine in appeals of serious violent crime convictions. I wrote the State's briefs in sixteen appeals. I argued nine murder cases and two manslaughter cases before the Maine Supreme Judicial Court sitting as the Law Court. I wrote the State's briefs and argued a successful State's appeal of a gross sexual assault case. I briefed a dozen habeas corpus cases in the United States District Court. Three of the habeas cases were appealed to the United States Court of Appeals, and I argued two of those appeals before the First Circuit. In the lower state courts, I defended the constitutionality of state statutes, including the stalking statute, the protection from abuse statute, and the animal cruelty statute. I handled numerous miscellaneous matters including a juvenile manslaughter adjudication appeal, a termination of parental rights appeal, and I participated at various motions hearings before State judges. I volunteered to work on civil rights cases for the Public Protection Unit of the Department of the Attorney General. In addition, I assisted the Advisory Committee on the Maine Rules of Civil Procedure in drafting new rules on contempt proceedings (Me. R. Civ. P. 66 and Me. R. Crim. P. 42).

From 2001 to present, I have been assigned to the Criminal Division of the United States Attorney's Office in the District of Maine. I am responsible for investigating and prosecuting federal crimes in the northern half of the District of Maine. The United States Attorney in Maine has offices in Bangor and Portland. I operate largely from the Bangor office which has only six attorneys. Because we are a small office, we each manage our own caseloads, which are, for the most part, very diverse. My own caseload has included bank fraud, mortgage fraud, tax evasion, mail and wire fraud, government program fraud, embezzlement from union funds, bank robbery, Hobbs Act cases, firearms and explosives cases, postal crimes, assaults on federal officials, harboring and transporting illegal aliens, entry after deportation cases, fraudulent document cases, visa

fraud, aggravated identity theft, drug cases, cases involving the special aircraft jurisdiction of the United States, cases involving the misconduct or neglect of ships officers, and child pornography cases. My cases range from complex white collar matters to prosecutions of petty offenses occurring in Acadia National Park and the Veteran's Administration hospital.

Typically, cases are referred to me by a federal law enforcement agency the FBI, ATF, ICE, IRS, USPIS, or an OIG's office from another agency. Often, a state or local law enforcement agency is involved as well. I supervise the investigation and direct the agents as needed. If a search warrant or other investigatory tool requiring court approval is needed, I present the matter to the United States Magistrate or the federal judge. As the evidence is developed, I present the case to the grand jury. Once a case is indicted, I handle the arraignment, preliminary examination and detention hearings. I manage the discovery phase of the litigation and respond to the various motions filed by defendants. If competency, suppression, or other pretrial motions are raised, I craft the Government's response and argue the Government's position at any motion or evidentiary hearings. Like 97% of all federal criminal cases, the vast majority of my cases result in a plea of guilty by the defendant. I typically negotiate the plea and any cooperation agreement with defense counsel. If the defendant does not plead guilty, I prepare and present the Government's case at trial. That process involves interviewing and preparing lay and expert witnesses, gathering documents and other physical evidence, preparing and responding to motions in limine, preparing direct and cross-examination questions and exhibits, and preparing opening and closing statements. Post conviction, I review presentence investigation reports, prepare the Government's case for sentencing, make any additional evidentiary record required to achieve a just sentence, and make the Government's sentencing recommendation. I handle all revocation of supervised release proceedings connected with my cases. I also handle a wide variety of additional matters, such as fugitive warrants and transfers to and from other districts.

 your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From 1988 to 1990, when I worked at Williams and Connolly, the firm was not divided into formal departments or practice groups. The primary focus of the firm was litigation, but the cases varied widely. My clients on the civil side included doctors and hospitals being sued for medical malpractice and corporations and individuals involved in various types of civil lawsuits, such as a plaintiff in a libel suit or a corporation being sued for copyright infringement. On the criminal side, my clients were corporations and individuals who were the targets of federal grand jury

investigations or who had been charged with white collar crimes. During the time I was with Williams and Connolly, I had one pro bono client, who was involved in an administrative law issue.

From 1990 to 1994, during my tenure as an Assistant United States Attorney assigned to the Civil Division, my typical clients were federal agencies. For instance, I represented the Department of Commerce, the Department of the Army, and the United States Postal Service in personal injury suits. I represented the Veterans Administration in medical malpractice cases. I represented the Farmers Home Administration and the Department of the Interior in property matters. I represented the Food and Drug Administration in affirmative litigation against a seafood processor for violations of the Food, Drug and Cosmetic Act.

While I was working at the Maine Department of the Attorney General, from 1994 to 2001, I represented the State of Maine in appeals of serious criminal convictions, in actions attacking the constitutionality of State statutes, and in miscellaneous motions practice before State courts. In my capacity as a volunteer with the Public Protection Unit, I represented victims of hate or bias incidents under the Maine Civil Rights Act..

As an Assistant United States Attorney assigned to the criminal division, I represent the United States of America in criminal matters before the United States District Court.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Virtually my entire career has been devoted to litigation. As an associate with Williams and Connolly, I was in court occasionally. When I was an Assistant United States Attorney assigned to the civil division from 1990 to 1994, I appeared in court regularly and was solely responsible for two non-jury civil trials. When I was an Assistant Attorney General for Maine from 1994 to 2001, I appeared regularly to argue the State's case in various murder and misdemeanor appeals, and I appeared on a wide variety of matters in various district and superior courts in Maine. I also argued two habeas cases in the First Circuit Court of Appeals. Since 2001, as an Assistant United States Attorney assigned to the criminal division, the frequency of my court appearances has increased. I am routinely in the United States District Court either before the United States District Judges or the United States Magistrate. Although full blown trials are infrequent, I appear frequently for various hearings and sentencings.

i. Indicate the percentage of your practice in:

1. federal courts:

75%

2. state courts of record:

25%

3. other courts:

4. administrative agencies:

ii. Indicate the percentage of your practice in:

1. civil proceedings:

20%

2. criminal proceedings:

80%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried four criminal cases as sole counsel to verdict. I have tried two civil cases as sole counsel to judgment. I have also tried numerous petty offenses before the United States Magistrate to judgment.

i. What percentage of these trials were:

1. jury:

50%

2. non-jury:

50%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not appeared before the Supreme Court of the United States.

- 17. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - a. the date of representation;
 - the name of the court and the name of the judge or judges before whom the case was litigated; and
 - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) United States v. Ferguson, Nos. 10-130-B-W & 10-156-B-W (D. Me. 2010).

Ferguson, a Greyhound bus driver, robbed a bank in Orono, Maine on July 13, 2010. After a swift but intensive investigation, Ferguson was arrested and brought into federal court. Ferguson was suspected of committing a series of bank robberies that had taken place throughout the Northeast since April of 2010. Ferguson was held on our initial complaint and was indicted by a grand jury in August of 2010. While he was detained pending trial, I supervised and coordinated the efforts of the FBI and about a dozen state and local law enforcement agencies in New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut and New York. On October 4, 2010, Ferguson pleaded guilty to the indictment charging the Maine bank robbery, and he waived venue and indictment and pleaded guilty to an information charging him with ten additional bank and credit union robberies, several of which were armed robberies. As part of his plea agreement, Ferguson agreed not to seek a downward departure of his sentence, and the United States reserved its right to seek an upward departure from the United States Sentencing Guideline range. Ferguson was sentenced to serve 121 months in prison.

- a. The representation was from July 2010 to February 2011.
- b. The case was in the United States District Court for the District of Maine before the Honorable John A. Woodcock.
- c. I was the sole prosecutor assigned to the case.

Defense counsel:

Jon A. Haddow, Esq. Farrell, Rosenblatt & Russell 61 Main Street, Suite 1 Bangor, ME 04401 (207) 990-3314

(2) United States v. Guiliani, No. 10-06-B-W (D. Me. 2010).

Guiliani came to the attention of United States Customs and Border Protection when a number of illegal aliens were found working in a potato processing plant in Fort Fairfield, Maine. The illegal aliens were prosecuted for having false documents, and they agreed to cooperate against Guiliani, who owned the company that was engaged in providing workers – many of whom were illegal – to American businesses. The investigation broadened and agents from the Immigration and Customs Enforcement, the Social Security Administration Office of the Inspector General, the Department of Education Office of the Inspector General and the Internal Revenue Service came on board. I coordinated the lengthy investigation which involved multiple search warrants, surveillance, and the review of a large number of documents. Guiliani was charged by indictment with harboring and transporting illegal aliens, social security

fraud, tax evasion, failure to file income tax returns, and fraud in connection with student loan applications. Guiliani agreed to plead guilty to all charges and pay restitution totaling over \$230,000 to the Internal Revenue Service and the Department of Education. Guiliani received a sentence of 19 months of imprisonment.

- a. The representation was from 2004 to February 2011.
- b. The case was in the United States District Court for the District of Maine before the Honorable John A. Woodcock.
- c. I was the sole prosecutor assigned to the case.

Defense counsel:

Bruce Merrill, Esq. 225 Commercial Street, Suite 501 Portland, ME 04101 (207) 775-3333

(3) United States v. Young, No. 09-140-B-W (D. Me. 2009)

United States v. Young, 2010 WL 1461558 (D. Me. Apr. 9, 2010) (order on motion in limine)

United States v. Young, 2010 WL 1461574 (D. Me. Apr. 9, 2010) (order on motion in limine)

United States v. Young, 2010 WL 1418744 (D. Me. Apr. 7, 2010) (order on motion in limine)

United States v. Young, 702 F. Supp. 2d 11 (D. Me. Apr. 6, 2010) (order on motion in limine)

United States v. Young, 2010 WL 1418746 (D. Me. Apr. 6, 2010) (order on motion in limine)

United States v. Young, 2010 WL 1418748 (D. Me. Apr. 6, 2010) (order on motion in limine)

United States v. Young, 694 F. Supp. 2d 25 (D. Me. Mar. 15, 2010) (order on motion to dismiss)

United States v. Young, 2010 WL 347878 (D. Me. Jan. 25, 2010) (magistrate's recommended decision on motion to dismiss)

I prosecuted Young for the theft of Office of Personnel Management (OPM) benefits from 1997 to 2005 and for filing false tax returns for 2003, 2004 and 2005. Young stole OPM survivor benefits which were intended for his deceased mother-in-law. Because Young never reported the death of his mother-in-law to OPM, and because OPM missed the woman's death on cross-checks with the Social Security Administration, the theft was not discovered until 2007. I supervised the investigation by the Office of Inspector General for OPM and the Internal Revenue Service. After plea negotiations reached an impasse, I presented the case for

indictment. After extensive motions and briefing, the case went to jury trial. The Defendant was found guilty and was sentenced to 33 months in prison.

- a. The representation was from 2008 to February 2011.
- b. The case was in the United States District Court for the District of Maine before the Honorable John A. Woodcock.
- c. I was the sole prosecutor assigned to the case.

Defense counsel:

Bruce Mallonee, Esq. (now a Maine District Court Judge) 163 State House Station Augusta, ME 04333 (207) 287-6950

Charles F. Budd, Jr., Esq. Rudman & Winchell 84 Harlow Street Bangor, ME 04401 (207) 947-4501

(4) United States v. Riley, No. 08-157-JAW (D. Me. 2010)

United States v. Wickett, No. 08-018-JAW (D. Me. 2009)

United States v. Carey, 716 F. Supp. 2d 56 (D. Me. 2010) (order finding prior cocaine offense did not count as a conviction for purposes of Armed Career Criminal Act) United States v. Wickett, 2010 WL 1500880 (D. Me. Apr. 13, 2010) (order denying motion to reduce sentence)

United States v. Carey, 2009 WL 485112 (D. Me. Feb. 26, 2009) (order on motion in limine)

United States v. Carey, 599 F. Supp.2d 50 (D. Me. 2009) (order denying motion to dismiss indictment)

United States v. Carey, 578 F. Supp. 2d 190 (D. Me. 2008) (order on detention)

This case involved the straw purchase of firearms by Wickett, a young Maine woman who was befriended by two Boston drug dealers, Riley and Damon. Riley, Damon and an associate, Carey, all felons, came to Maine to purchase firearms. They convinced Wickett to purchase the firearms for them, since they would not have passed a background check. An astute firearms dealer called the police, and Wickett was arrested. She later confessed to the police and agreed to plead guilty to making a false statement in the acquisition of firearms. She received an 18 month sentence. Riley, Damon and Carey were each charged with possession of a firearm by a felon and a conspiracy to make false statements in the acquisition of firearms. Riley's case was transferred to Boston and combined with another possession of firearm charged there. Riley received a sentence of 92 months in prison. Damon pleaded guilty to

being a felon in possession and was sentenced to 70 months. After extensive pre-trial motions practice, including a motion to dismiss a superseding indictment, Carey proceeded to trial and was found guilty of the felon in possession charge. Carey received a sentence of 90 months in prison.

- a. The representation was from 2007 to December 2010.
- b. The case was in the United States District Court for the District of Maine before the Honorable John A. Woodcock.
- c. I was the sole prosecutor assigned to the case.

Defense Counsel for Riley: Jeffrey M. Silverstein, Esq. Law Office of Jeffrey M. Silverstein, PA 9 Central Street, Suite 209 Bangor, ME 04401 (207) 992-9158

Defense Counsel for Damon: Virginia G. Villa, Esq. Federal Defender's Office Key Plaza, 2nd Floor, Suite 206 23 Water Street Bangor, ME 04401 (207) 992-4111

Defense Counsel for Carey: Leonard I. Sharon, Esq. Law Office of Leonard Sharon 223 Main Street Auburn, ME 04210 (207) 344-6311

Defense Counsel for Wickett: Richard L. Hartley, Esq. Law Office of Richard Hartley 15 Columbia Street, Suite 301 Bangor, ME 04401 (207) 941-0999

(5) United States v. Escalante, CR-07-45-B-W & CR-07-67-B-W (2007) United States v. Centeno-Perez, CR-07-65-B-W (2007 – 2010)

The husband and wife team of Escalante and Centeno-Perez operated a labor contracting business which supplied workers, many of whom were illegal aliens, to various

employers in eastern Maine. The defendants were responsible for employing a large portion of the illegal migrant workforce present in Washington County, Maine. In addition to their labor contracting business, they owned a Mexican Store and Restaurant. Although both Escalante and Centeno-Perez had work authorization papers from the Immigration and Naturalization Service, their documents had been procured through fraudulent asylum claims. I worked the investigation with special agents from Immigration and Customs Enforcement (ICE). There were numerous witnesses who were unauthorized workers employed by Escalante and Centeno-Perez who were also prosecuted. We obtained a search warrant for the defendants' residence and found critical evidence of their scheme to harbor, transport and employ illegal workers.

Escalante was charged first by complaint with visa fraud and aggravated identity theft. She agreed to cooperate and plead guilty both to the visa fraud charged in the indictment and to an information charging her with a conspiracy to employ illegal aliens. With Escalante's cooperation, we were able to charge Centeno-Perez with conspiracy to employ illegal aliens, transporting and harboring illegal aliens, and visa fraud. Centeno-Perez fled the country but surfaced about a year later in Canada. Working with the Office of International Affairs, I filed a request for provisional arrest with the Canadian government and then filed for extradition. About a year after the extradition was filed, Centeno-Perez was turned over to ICE agents and appeared to answer the charges in Maine. After discovery and motions practice, Centeno-Perez pleaded guilty and was sentenced to 33 months of imprisonment. After he serves his prison sentence, Centeno-Perez will return to ICE custody for removal proceedings.

- a. The representation was from 2006 to 2010.
- b. The case was in the United States District Court for the District of Maine before the Honorable John A. Woodcock.
- c. I was the sole prosecutor assigned to the case.

Defense Counsel for Escalante: Jon A. Haddow, Esq. Farrell, Rosenblatt & Russell 61 Main Street, Suite 1 Bangor, ME 0440i (207) 990-3314

Defense Counsel for Centeno-Perez: Ronald W. Bourget, Esq. Bourget & Bourget, P.A. 64 State Street Augusta, ME 04330 (207) 623-3731 (6) United States v. Winchenbach, No.-03-0097-JAW-1 (D. Me. 2003)

Winchenbach was the quality assurance manager for Jordan's Meats, a meat processing facility with plants in Augusta and Portland, Maine. Jordan's Meats had its own USDA accredited laboratory to ensure that its products met quality standards set by the USDA regulations. We received information from an insider at Jordan's Meats that lab results for hot dogs were being falsified resulting in a product with more fat and water than allowed by law. I supervised the investigation which was conducted by agents from the USDA Office of the Inspector General. Ultimately, Winchenbach agreed to waive indictment and plead guilty to a felony count of obstructing a proceeding before the Food Safety Inspection Service of the USDA. Based on information provided by Winchenbach and others, an Assistant United States Attorney from the civil division was able to negotiate a \$100,000+ settlement with Jordan's Meats. I received an award of excellence from USDA for my work in connection with this case.

- a. The representation was from 2003 to 2004.
- b. The case was in the United States District Court for the District of Maine before the Honorable John A. Woodcock.
- c. I was the sole prosecutor assigned to the case.

Defense Counsel: Thomas E. Dwyer, Jr., Esq. Dwyer & Collora 600 Atlantic Avenue 12th Floor, Federal Reserve Plaza Boston, MA 02210 (617) 371-1000

(7) United States v. Sanford & Pelotte, No. 03-53-JAW-2 (2003-04) United States v. Sanford, 327 F. Supp. 2d 54 (D. Me. 2004) United States v. Sanford, 301 F. Supp. 2d 36 (D. Me. 2004)

This case involved the theft of a .45 caliber handgun from a blind man and an armed robbery of a supermarket pharmacy in Skowhegan, Maine. We charged the defendants with a Hobbs Act robbery conspiracy, using a firearm during the commission of a federal crime of violence, possession of a stolen firearm, possession of a firearm by an armed career criminal, and possession of a controlled substance with intent to distribute (oxycodone). Pelotte agreed to plead guilty and cooperate. He was sentenced to 13 years in prison. Sanford filed motions to sever and suppress. After briefing and hearing, the Government won both motions. On the eve of trial, Sanford changed his plea to guilty and was sentenced to 20 years imprisonment.

- a. The representation was from 2003 to 2004.
- b. The case was in the United States District Court for the District of Maine before the Honorable John A. Woodcock.
- c. I was the sole prosecutor assigned to the case.

Defense Counsel for Pelotte: Wayne R. Foote, Esq. Law Office of Wayne R. Foote 344 Mt. Hope Avenue Bangor, ME 04401 (207) 990-5855

Defense Counsel for Sanford: Stephen C. Smith, Esq. Smith Law Offices 9 Central Street, Suite 209 Bangor, ME 04401 (207) 941-2395

(8) State v. Haque, 726 A.2d 205 (Me. 1999)

Haque appealed his convictions of the murder of his girlfriend and an assault with a dangerous weapon on her neighbor who attempted to stop the killing. On behalf of the State, I briefed and argued the appeal before the Maine Supreme Judicial Court sitting as the Law Court. The Law Court agreed with the State's argument that the lower court properly excluded the testimony that Haque was in a blind rage because it was an opinion which stated a legal conclusion beyond the specialized knowledge of the expert. The Law Court also agreed that the cultural anthropologist's testimony was not relevant to any state of mind defense, particularly where the defendant had disavowed any reliance on a cultural defense and where the defendant had not introduced evidence sufficient to generate the defense of adequate provocation. Finally, the Law Court agreed with the State that the out of court statements of the victim were not offered for the truth of the matter asserted and were thus admissible. My work on this case involved the preparation of the State's brief and argument before the Law Court.

- The representation was in 1999.
- The appeal was heard by Chief Justice Wathen, and Justices Clifford, Rudman, Dana, Saufley and Calkins.
- c. I was the sole attorney representing the State on appeal.

Appellate Counsel: William Maselli, Esq. 98 Washington Avenue Portland, ME 04101 (207) 780-8400

(9) State v. King, 708 A.3d 1014 (Me. 1998) State v. Jackson, 697 A.2d 1328 (Me. 1997) State v. Moore, 697 A.2d 1328 (Me. 1997)

King and Jackson were convicted of manslaughter and Moore was convicted of the murder of a crack cocaine dealer, in Lewiston, Maine. The appellants raised numerous issues including whether one defendant's Fifth Amendment right to remain silent was violated during a custodial interview; whether there was error in the accomplice liability instruction; whether there was a violation of the sequestration order; whether evidence of an earlier plan to rob a crack cocaine dealer was admissible under Me. R. Evid. 404(b); whether evidence that the prosecution witness had told police that he thought the defendant was innocent was improperly excluded; whether there was sufficient evidence of identity and whether the trial courts properly sentenced the defendants. On behalf of the State, I briefed and argued the appeals before the Maine Supreme Judicial Court sitting as the Law Court. The Court affirmed all of the convictions.

- a. The representation was from 1997 to 1998.
- The King appeal was heard by Chief Justice Wathen and Justices Roberts, Clifford, Rudman, Dana and Lipez.

The Jackson and Moore appeals were heard by Chief Justice Wathen and Justices Roberts, Glassman, Rudman and Lipez.

c. I was the sole attorney representing the State on appeal.

Principal Counsel for King: Leonard I. Sharon, Esq. 223 Main Street Auburn, ME 04212 (207) 344-6311

Counsel for Jackson: David L. Brandt, Esq. 903 Roosevelt Trail Windham, ME 04062 (207) 892-3236 Counsel for Moore: Stuart W. Tisdale, Jr., Esq. 80 Exchange Street Portland, ME 04112 (207) 879-9177

(10) State v. Craney & Eastman, 662 A.3d 899 (Me. 1995)

Craney and Eastman were convicted of the robbery and murder of an elderly auctioneer. On appeal they argued that the trial court erred by admitting Craney's redacted confession and that the prosecutor's closing argument deprived them of a fair trial. The State contended that the replacement of Eastman's name with a neutral pronoun in Craney's confession followed the rules set forth in *Richardson v. Marsh*, 481 U.S. 200 (1987) and did not run afoul of *Bruton v. United States*, 391 U.S. 123, 126 (1968). Furthermore, the State contended that the redaction did not so distort he confession so as to violate the rule of completeness under Me. R. Evid. 105. The Law Court agreed with the State's analysis on the *Bruton* issue, found any error in the prosecutor's closing to be harmless and upheld the convictions. I researched and wrote the brief and presented oral argument.

- The representation was in 1995.
- The appeals were heard by Chief Justice Wathen and Justices Roberts, Glassman, Clifford, Rudman, Dana and Lipez.
- I was the sole attorney representing the State on appeal. With me on the State's
 Brief were the two reviewing attorneys Assistant Attorneys General Charles K.
 Leadbetter and Wayne S, Moss.

Counsel for Defendant Craney: David L. Brandt, Esq. 903 Roosevelt Trail Windham, ME 04062 (207) 892-3236

Counsel for Defendant Eastman: William B. Cote, Esq. Laskoff & Associates P.O. Box 7206 Lewiston, ME 04243 (207) 786-3173

18. <u>Legal Activities</u>: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe

the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Much of the work of a federal prosecutor occurs before a case is ever charged and becomes public. In a small office such as mine, where resources are limited, a federal prosecutor plays a major role in investigating cases. We decide which investigatory steps to take, issue subpoenas, review and analyze documents, interview witnesses and present the case to the grand jury. Particularly in a white collar investigation, investigation activities and grand jury presentations can take months. Once the evidence has been gathered and analyzed, I bear the responsibility of recommending who to charge and what to charge. Occasionally, after investigation, I have made the decision not to charge the case or to refer it to the State for prosecution. The investigatory work and charging decisions are every bit as important as the work of preparing for a trial or trying a case. Ultimately, the primary responsibility of any federal prosecutor is not to win a conviction but to see that justice is done.

19. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Aside from a federal retirement under FERS, I have no deferred income/future benefits.

21. <u>Outside Commitments During Court Service</u>: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any plans to pursue outside employment during my service with the court.

22. Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

 Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would recuse myself from any matter in which a party is represented by McCloskey, Mina & Cunniff, LLC, where my husband is a partner.

At present, my husband and I own stock in a number of public companies. If confirmed, I will follow the guidance of the Administrative Office of U.S. Courts and of the District Court in undertaking any appropriate reinvestment into diversified funds. If I continue to own any individual stocks, I would recuse myself from any cases in which I have investments.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would handle all matters involving potential conflicts of interest through careful adherence to the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions. I would seek to avoid not only actual conflicts of interest, but any appearance of conflict.

25. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

When I was an associate with Williams and Connolly, I handled a pro bono matter involving the restoration of a pharmaceutical license which had been revoked by the District of Columbia. I would estimate that I devoted 60 hours over the course of about six months to that matter.

During my tenure with the Maine Office of the Attorney General, I volunteered on the Civil Rights Task Force. This was a team of lawyers who were available to respond on short notice to seek temporary protection orders and then permanent injunctions for victims of hate or bias incidents under the provisions of the Maine Civil Rights Act. In

the time that I participated, I sought and received protection orders for a group of pro-life picketers who had been threatened while exercising their First Amendment rights, and a black man who was assaulted and threatened. I also handled a matter involving a gay teenager who had been assaulted and harassed. This type of work required immediate attention. I would assess the facts of the situation, move for a temporary protection order, and then either resolve at hearing or by consent decree the issue of the permanent injunction. I would estimate that I devoted approximately twenty hours for each of the civil rights matters I handled.

During my employment as an Assistant United States Attorney, I have not engaged in any pro bono legal practice. I have continued to volunteer for my community, however. I volunteered with the Bangor Area Homeless Shelter to provide monthly meals to feed thirty people on many occasions. I have raised funds for a new playground for a local school. I spearheaded the planting of the Margaret Chase Smith Federal Building pink tulip garden which raised funds for the Maine Cancer Society. And I have worked on fundraising projects with the Mabel Wadsworth Women's Health Center, which provides health care services to all women regardless of their ability to pay.

26. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On March 5, 2010, Representatives Chellie Pingree and Michael Michaud announced the formation of a screening panel comprised of ten prominent Maine attorneys to help Representatives Pingree and Michaud make a recommendation to President Obama on the appointment of the next U.S. District Court Judge.

On March 11, 2010, I submitted my application materials. On March 26, 2010, I had an interview with the screening panel. I was told by Representative Michaud's office that my name was one of three or four that were recommended by the screening panel. On November 30, 2010, I learned from Representative Michaud's office that my name was being submitted to the White House for the judgeship. Since December 1, 2010, I have been in contact with pre-nomination officials at the Department of Justice. On January 14, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On March 2, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

FINANCIAL DISCLOSURE REPORT Report Required by the Ethica

Rev. 1/2010	Rev. 1/2010 NOMINATION FILING				
1. Person Reporting (last na	me, first, middle initial)	2. Court or Organization	3. Date of Report		
Torresen, Nancy		United States District Court - Maine	03/02/2011		
4. Title (Article III judges in magistrale judges int United States District Co	diente active or senior starus; licate full- or part-lime) ourt Judge	Sn. Repart Type (check appropriate type) Nomination, Onic Q3/02/2011 Initial Annual Finel Sb. Amended Repart	6. Reporting Period 01/2010 ta 03/01/2011		
7. Chambers or Office Add United States Attorney's 202 Horlow Street Suite 111 Bangor, Maine 0440)		8. On the basis of the Information contained in this Report and modifications persists ing thereto, it is, in my opinion, in conwits applicable laws and regulations. Reviewing Officer	S day pillanec Date		
	IMPORTANT NOTES: The instruction of the checking the NONE box for each particular to the control of the control	tlans accompanying this form must be followed. Complete t where you have no reportable information. Sign on last j	e ali puris. Page.		
_	Reporting individual only: sec pp. 9-13 of filing i portable positions.) <u>POSITION</u>	instructions.) NAME OF ORGAN	HZATION/ENTITY		
,					
_	TS, (Reparing instrictual only; see pp. 14-16 portable agreements.)	of filing instructions)			
DATE		PARTIES AND TERMS			
			^.		

FINANCIAL DISCLO	Name of Person Repo Torresen, Nancy	ri i ng		Vate of Repart Q3/Q2/2011			
III. NON-INVESTMEN	NT INCOME. (Repark	ing individual and spouse; so	re pp, 17-24 of filling instruction	115.)			
A. Filer's Non-Investment I	ncome						
NONE (No reportable	non-investment income	J					
DATE		SOURCE AND	TYPE		INCOME (yours, not spouse's)		
1.			***	-			
2.							
3.							
4.							
B. Spouse's Non-Investment Dollar amount not required except for hor NONE (No reportable DATE				ection.			
1. 2010	McCloskey, Mina	& Cunniff - parmership i	neoma	_			
2. 201 !	McCloskey, Mina	& Cunniff - partnership i	ncome				
3,							
4							
				· · · · · · · · · · · · · · · · · · ·			
IV. REIMBURSEMEN thelides these to spense and dependent of NONE (No reportable	ildren; see pp. 25-27 of filing insi						
SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAI	O OR PROVIDED		
, Exempt							
					,		

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Torreson, Nancy		O3/02/2011
V. GIFTS. (includes those to spotas and dependent children; see yp.	18-31 of filling lastructions.)		•
NONE (No reportable gifts.)			
SOURCE	DESCRIPTION		VALUE
1. Exempt			
2.			
3.			
4.			
5.			
VI. LIABILITYES. (Includes those of sponse and dependent ch	illdren; see pp. 31-33 of filling instructions.)		
NONE (No reportable liabilities.)			
CREDITOR	DESCRIPTION	VA	LUE CODE
1.			
2.			
3,			
4,			
5.			

FINANCIAL DISCLOSURE REPORT		₹T [Name of Person Reporting						Date of Report
Page 4 of 7			Torresen, Nancy						03/02/2011
VII. INVESTMENTS and				(Încinées sho	ec of sponse and a	lependent chi	Udren; sca	pp. 34-60	of fiting instructions.
A. Description of Assets (including trust assets)	D. Income during reporting period		C. Gross volue at end		D. Transactions during repartie				ng period
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code I (A-H)	(2) Type (c.g. div., reni, br int.)	(1) Value	(2) Vatue Method Code 3 (()-1V)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (3-P)	(4) Clain Code I (A-II)	(5) Identity of buyer/seller (if private transaction)
1. TD Bunk Accounts	٨	Interest	L	Т		T			
2. Peoples United Bank Accounts	^	Interest	L	т		1			
3. Key Benk Account	^	Interest	,	т					F-/
 McCloskey, Mina & Cunniff Law Fit Capital Fund 	A ne	Interest	к	7					
5. Vanguard 500 index Mutual Fund	D	Dividen	ј к	Т					
6. IRA#I									
7 Vanguard Realth Care Fund	A	Dividend	ı x	т					
8 Vanguard Int'l Growth Fund	A	Dividend	j J	Т					
9. IRA #2									
to Vanguard Wellington Fund	В	Dividend	ı ĸ	т					
11. Brokerage Account									
12 Fidelity Money Market Account	٨	înterest	1	т					
13 Bank of America Stock	٨	Dividend)	τ					
14 Mierosofi Stock	٨	Dividend)	Τ					
5 Pfizer Stock	A	Dividend	j	т					
16 Powershares Exchange Stock	A	Dividend]	Ŧ					
77 Verizon Comm. Stock	٨	Dividend	J	т					
1. Incomes Grills Coders	MANA C MANANA A C MANANA A C MANANA C M	5 =\$1,001 - \$2, 2 =\$100,001 - \$ 4 =\$15,001 - \$ 5 =\$15,001 - \$ 5 =\$300,001 - \$ 5 =*Crass(Resi E	61,000,000 61,000,000 61,000,000	L =\$50,000 P1 =\$1,000	0,001 - \$5,000,000 [- 4,100,000 [- 4,100,000,000 100,000,000 100,000,000	112 ~Mne M ~ \$100,	1 - 515,000 r Uses 55,00 DOT - 5250, 10,001 - 523 Varket	(8110,016 (000)	E =\$15,000 - \$30,000

FINANCIAL DISCLOSURE REPORT				Name of Person Reporting Touriesen, Nancy					.99	Onte of Report	
										03/02/2011	
/II	. INVESTMENTS and TRUS NONE (No reportable income, ass				(includes rico:	se of spouse and s	dependens shi	Idren; sce	: pp. 54-40 o	f filing instructions.)	
	A. B. Description of Assets Income during (including from easets) reporting period			C. Gross value as end of reporting period		D., Transactions during reporting period					
	Place "(X)" after each orset exempt from prior disclosure	(I) Amount Code I (A-H)	(2) Type (e.g., div., rent. or int.)	(1) Value Code 7 (J-P)	(2) Value Method Code 3 (Q-W)	(i) Type (e.g., buy, sell, redessption)	(2) Date ram/dd/yy	(3) Value Code 2 (I-P)	(4) Gain Code t (A-H)	(5) Identity of bnyes/seller (If private transaction)	
18.	- American EuroPacific Growth Mutual Fund	A	Dividend	K	Т		Τ				
9.	- American New Perspective Class A Mutual Fund	^	Dividend	1	Т						
D.	- Honford Mid Cap Class A Muntol fund	Α	Dividend	К	r						
ì.	- Pranklin High Income Mutual Fund	IJ	Dividend	К	T						
2.	- Franklin Income Class A Mutual fund	٨	Dividend	1	Т						
3.	- Hartford Floating Rate Mutual Fund	A	Dividend	К	Т		†				
4.	- Templeton Global Bond Class A Mutual Fund	Α	Dividend	К	Т						
5.	AT&T Stock	В	Dividend	ĸ	Т						
6,	Undeveloped Lot - Waldo County, Maine		None	N	R						
7.	Undeveloped Lot - Hancock County, Maine	`	None	L.	R			·			
8,	Government Bonds Series PE and I	Λ	Interest	к	т					-	
9.										·····	

i. Income Gain Codek (See Columns B1 and D4) 2. Value Codes (See Columns C1 and D3)	A ~51,000 or len P~530,001 ~ \$100,000 J~515,000 or len N~5150,001 ~ \$300,000 PJ~515,000,001 ~ \$300,000	B =\$1,001 - \$7,500 CI =\$100,001 - \$1,000,000 R =\$15,001 - \$50,000 CI =\$00,000 - \$1,000,000	C =\$2,591 - \$3,000 111 =\$1,000,001 - \$5,002,000 1,-\$30,001 - \$100,000 P1 =\$1,000,001 - \$3,000,000	D ~\$5,001 - \$15,000 112 ~More than \$5,000,000 M =\$100,001 - \$250,000 P2 ~\$3,000,001 - \$25,000,000	E "\$15,001 \\$50,000
3, Value Method Codes	Q ~Approisa!	R -Con (Real Estate Only)	P4 =More than \$50,000,000 5 =Assessment	T =Cash Market	,
(See Cobune C2)	U =Book Value	V -Daher	V =Emimated		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	ToDate of Report
Page 6 of 7	Forresen, Nancy	03/02/2011
	l .	

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Repart)

Pert VII

- # 26 Undeveloped Lot, Waldo County, Maine Purchased in January of 2005 for \$290,000.
- # 27 Undeveloped Lot, Hancock County, Maine Purchased April of 2005 for \$75,000.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Daic of Report
Page 7 of 7	Torresen, Nancy	03/02/2011

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and nalmor or dependent children, if any) is mercit, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting mon-disclosure.

I further certify that earned income from outside employment and bonornets and the acceptance of gifts which have been reported are in compilance with the provisions of 5 U.S.C. app. § 501 et. ecq., 5 U.S.C. § 7353, and Judicial Conference regulations.

SIGNATURE Nancy Torresa

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (S U.S.C., app., § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES				
Cash on hand and in banks		93	000	Notes payable to banks-secured			
U.S. Government securities – see schedule		20	000	Notes payable to banks-unsecured			
Listed securities - see schedule		266	952	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others		20	000	Other unpaid income and interest			
Doubtful				Real estate mortgages payable personal residence		49	500
Real estate owned see schedule		956	240	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property							
Cash value-life insurance							
Other assets itemize:							
- Thrift Savings Plans		553	097				
				Total liabilities		49	500
				Net Worth	1	859	789
Total Assets	1	909	289	Total liabilities and net worth	1	909	289
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	ИО		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

462

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
Series EE Bonds	\$ 3,250
Series I Bonds	16,750
Total U.S. Government Securities	\$ 20,000
Listed Securities	
American Europacific Growth Fund	\$19,990
American New Perspectives	14,737
AT&T stock	28,514
Bank of America stock	4,047
Franklin High Income Class A	16,659
Franklin Income Class A	11,951
Hartford Floating Rate Fund Class A	19,393
Hartford Mid Cap Class A Fund	16,359
Microsoft Corp. stock	10,639
Pfizer, Inc. stock	9,874
Powershares Financial Preferred (PGF)	9,997
Templeton Global Bond Class A	15,820
Vanguard Health Care Fund	21,783
Vanguard International Growth Fund	11,480
Vanguard 500 Index Mutual Fund	18,696
Vanguard Wellington Fund	24,557
Verizon Communications	12,456
Total Listed Securities	\$266,952
Real Estate Owned	
Personal residence	\$450,000
Undeveloped lot #1	400,000
Undeveloped lot #2	50,000
Jointly-owned residential home	50,000
One-week vacation time share	6,240
Total Real Estate Owned	\$956,240

AFFIDAVIT

I,Nancy Torresen	do swear
that the information provided in this statement is,	to the best
of my knowledge, true and accurate.	
3/1/2011 Nany Tonesa	
3/1/2011 Nany Tonesa	
(DATE) (NAME)	
(NOTARY)	(
LANG C DE	Ave
JANE E. DEA Plotary Public,	Maran
My Commission Excises Ser	tember 20, 2012

Senator COONS. Thank you, Ms. Torresen. Ms. Brown.

STATEMENT OF NANNETTE JOLIVETTE BROWN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA

Ms. Jolivette Brown. Thank you, Senator Coons. I also want to thank you and Senator Grassley for holding this hearing and providing us an opportunity to provide testimony. I want to thank the President of the United States for making this nomination. I need to thank Senator Landrieu for her recommendation to the President, and I am greatly thankful to Senator Vitter for supporting my nomination.

I have here with me today my husband, Marcus Brown; my two children, Christopher and Rachel. Looking at us from home are my siblings, Carolyn, James, Charles, and Dwight. So I just want to introduce you to them, and also thank who I know is watching, many people at city hall and New Orleans who have embraced me and embraced this moment with me.

So with that being said, Senator, I thank you again for holding this hearing, and I have no further opening statement.

[The biographical information of Ms. Jolivette Brown follows:]

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

Nannette Jolivette Brown; Nannette V. Jolivette

2. Position: State the position for which you have been nominated.

United States District Judge for the Eastern District of Louisiana

3. Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Law Department City of New Orleans 1300 Perdido Street Suite 5E03 New Orleans, Louisiana 70112

4. Birthplace: State year and place of birth.

1963; Lafayette, Louisiana

5. <u>Education</u>: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1992 - 1998, Tulane Law School; LL.M. in Energy and Environment, 1998

1985 - 1988, Tulane Law School; J.D., 1988

1981 – 1985, University of Southwestern Louisiana (now known as University of Louisiana at Lafayette); B.A., 1985

Other 1

2008, Harvard Law School, Program on Negotiation

2006, Loyola Law School Mediation Training

1991, Harvard Law School Summer Institute for Lawyers

6. <u>Employment Record</u>: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation

from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

May 2010 – present City of New Orleans / Mayor Mitchell J. Landrieu 1300 Perdido Street, Suitc 5E03 New Orleans, Louisiana 70112 City Attorney

2004 – 2010 Chaffe McCall, L.L.P. 1100 Poydras Street, Suite 2300 New Orleans, Louisiana 70163 Special Partner (I worked on a contract basis from 2007 through 2009 while at Loyola)

2007 – 2009 Loyola University New Orleans College of Law 7214 St. Charles Avenue Box 901 New Orleans, Louisiana 70118 Visiting Assistant Clinical Professor of Law

2003 – 2004 Hoffman, Siegel, Seydel, Bienvenu and Centola, L.L.P. 650 Poydras Street, Suite 2100 New Orleans, Louisiana 70130 Special Counsel

2000 – 2003 Milling Benson Woodward, LLP 909 Poydras Street, Suite 2300 New Orelans, Louisiana 70112 Special Counsel (2000 – 2002) Equity Partner (2003)

1998 – 2000 Southern University Law Center 2 Roosevelt Steptoe Drive Baton Rouge, Louisiana 70813 Assistant Professor of Law

1996 - 1998 Onebane Law Firm 1200 Camellia Boulevard, #300 Lafayette, Louisiana 70502 Associate 1994 – 1996 City of New Orleans – Department of Sanitation City Hall 1300 Perdido Street New Orleans, Louisiana 70112 Director

1994 Christovich and Kearney, LLP 601 Poydras Street Suite 2300 New Orleans, Louisiana 70130 Associate; Special Counsel

1992 - 1994 Tulane Law School 6329 Freret Street New Orleans, Louisiana 70118 Teaching Fellow

1988 – 1992 Adams & Reese, LLP One Shell Square 701 Poydras Street, Suite 4500 New Orleans, Louisiana 70130 Associate

Fall 1987
Honorable Veronica DiCarlo Wicker (deceased)
United States District Court for the Eastern District of Louisiana
500 Poydras Street
New Orleans, Louisiana 70112
Legal Extern (unpaid)

Summer 1987 Camp Carmouche Law Firm (no longer in business) 650 Poydras Street New Orleans, Louisiana 70130 Law Clerk

Summer 1986 Law Offices of Ammon Miller 700 Commerce Street, Suite 312 New Orleans, Louisiana 70130 Law Clerk Summer 1986 Law Office of Dennis and Sadler (no longer in business) Third Street Lafayette, Louisiana Law Clerk

Other Affiliations (Uncompensated)

2001 – present
Federal Bar Association, New Orleans Chapter
Attorney Conference Center
500 Poydras Street, Room 364
Hale Boggs Federal Building
New Orleans, Louisiana 70130
Board of Directors

2003 – 2007 Jack and Jill of America, New Orleans Chapter P.O. Box 850365 New Orleans, Louisiana 70185 Executive Board Member

1994 HUME Child Development Agency (a United Way agency) 319 North Tonti Street New Orleans, Louisiana 70119 Board of Directors

1990 – 1993 Association for Women Attorneys P. O. Box 52076 New Orleans, Louisiana 70152 President (1991 – 1992) Board Member (1990 – 1993)

Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

I have never served in the U.S. Military. I have not registered for selective service.

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Professional

Certificate for work with Department of Environmental Quality on surveillance operation, 2011

New Orleans Magazine, People to Watch, 2010

National Federal Bar Association's President's Award for New Orleans' Bar Association program on *Powell v. Alabama*, 2008 (Chair of *Powell v. Alabama* Committee, which developed program and moderated event)

Coached team of Loyola Law students to win ABA Regional Mediation Advocacy Competition, 2006

Award for Outstanding Publication of *Advocate*, National Federal Bar Association, 2004 Louisiana Bar Foundation Fellow, 2002

Tulane Law School Distinguished Minority Graduate Award, 2001 - 2002

Association for Women Attorneys Lifetime Membership Award, 1997

Louisiana Jaycee's Outstanding Young Women (Recognized for Accomplishments in Protecting and Preserving the Environment), 1995

Honoree, Mayor's Council on Women, 1995

New Orleans Magazine 50 People to Watch (Recognized for establishing New Orleans' First Curbside Recycling Program), 1995

Black Achiever in Business Award, Dryades YMCA, 1994

<u>Academic</u>

Tulane Law School, Environmental Law Fellowship, 1992
Tulane Law School's Dean's Honor Scholarship Award
Earl Warren Scholarship Award
University of Southwestern Louisiana, Vermilion Honor Society
University of Southwestern Louisiana, Blue Key Honor Society
Alpha Kappa Alpha Sorority Scholarship Award
Member USL Honors Program Curriculum
First Recipient of the Dr. James Oliver Scholarship Award
USL Most Outstanding Graduating Senior Award, 1985

 Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

Litigation Section, Environmental (1988 - present)

American Inns of Court (Barrister) (Acadiana) (1996 - 1998)

Association for Women Attorneys

President (1991 - 1992)

Board Member (1990 - 1993)

Federal Bar Association, New Orleans Chapter (1988 - present)

Board of Directors (2001 - present)

Editor, Advocate (2003 - 2004)

Chair, Mediation Advocacy Seminar Committee (2009, 2010)

Fifth Circuit Court of Appeal Bar Association (2002)

Institute for Energy Law of the Center for American and International Law

Advisory Board Member (2002 - 2003)

Louis A. Martinet Society (1988 - present)

Louisiana Attorney Disciplinary Board (2004 - 2010)

Hearing Committee Member (2004 – 2005)

Chair, Hearing Committee (2006 - 2010)

Louisiana State Bar Association (1988 - present)

House of Delegates (2000 - 2004)

Minority Involvement Section (1988 - present)

Environmental Law Section (1995 - 2005)

Alternative Dispute Resolution Committee (2007 - 2009)

Quality of Life Committee Appointment (2007 - present)

Maritime Law Association, Associate Member (2002)

National Bar Association (2011 and periodically since 1988)

New Orleans Bar Association (1988 - present)

10. Bar and Court Admission:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Louisiana, 1988

There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2001
United States Court of Appeals for the Fifth Circuit, 2001
United States District Court for the Eastern District of Louisiana, 1988
United States District Court for the Western District of Louisiana, 1988
United States District Court for the Middle District of Louisiana, 1988

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Alpha Kappa Alpha Sorority (2004 - 2005)

Big Brothers Big Sisters of Greater Houston (2005 – 2006)

Fundraising Committee (Raised money and secured sponsors for Gala to help defray costs incurred by organization taking on little brothers and sisters from New Orleans after Hurricane Katrina)

Catholic Daughters of Lafayette (1996)

Coalition of One Hundred Black Women, New Orleans Chapter (2009 – present) Chair, Legislative Breakfast Committee (2009 – 2010)

Committee of 21 (1994 - 1996)

HUME Child Development Agency (a United Way Agency) Board of Directors (1994)

Institute of Politics (1995)

Jack and Jill of America, New Orleans Chapter (2003 – 2008)
Executive Board Member (2003 – 2007)
Chair, Foundation and Grants for Children's Leadership Programs (2007 – 2008)

Jewish Community Center, New Orleans (1999 - 2004)

Selection Review Panel for Environmental Law and Acquisition Responses (2008)

Special Evaluation Committee of the Sewerage & Water Board (2000 - 2002)

Teen Court, Judge, Coach (2009)

United Way of Greater New Orleans, Women's Leadership Initiatives (2002 – 2005)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The membership of the following organizations is comprised of women: Alpha Kappa Alpha Sorority, Coalition of One Hundred Black Women, New Orleans Chapter, and the Catholic Daughters of Lafayette. Otherwise, to the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

FBA Sponsors Mediation Workshop at Federal Court, The Advocate (New Orleans Federal Bar Ass'n Journal) Vol. 19, No. 1, Fall 2009, at 12. Copy supplied.

Diversity Refined: Access to Justice: The Many Faces of Environmental Justice: Which one Speaks the Truth?, 56 La. B.J. 420, Apr./May 2009. Copy supplied.

Negotiate?: A Book Review and Commentary on the Books: Women who Don't Ask and Ask for It, by Linda Babcock and Sara Laschever, 56 La. B.J. 191, Oct./Nov. 2008. Copy supplied.

75th Anniversary of Powell v. Alabama Commemorated, La. B.J. June/July 2008, Vol. 56, No. 1. Copy supplied.

Department: Focus on Professionalism: Coping with Psychological Trauma, 55 La. B.J. 350, Feb./Mar. 2008. Copy supplied.

Preparing for the Next Disaster, La. Contractor, Vol. 55 No. 3, Mar. 1, 2006. Copy supplied.

Letter to the Editor: New Curbside Recycling Program is Succeeding, Times Picayune, Nov. 21, 1995.

Letter to the Editor: Recycling is Cost-Effective Option for U.S. Cities, Times Picayune, Feb. 21, 1995.

Additionally, from 2003 to 2004, I served as editor of the *Advocate*, a newsletter published by the New Orleans Chapter of the Federal Bar Association.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the

name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Currently, I am a member of the Criminal Justice Working Group established by Mayor Landrieu to study issues related to criminal justice and specifically to make recommendations regarding the correct size of Orleans Parish Prison. After being advised by consultants and hosting public hearings, we have made only one recommendation, which was to recommend that the Sheriff be allowed to move forward with contruction of a facility to accommodate 1,400 jail beds. We continue to study what would be advisable as the correct size of the finished project. A copy of the Working Group's resolution is supplied.

From 2000 to 2002, I served on the Special Evaluation Committee, which was established to evaluate bids to run New Orleans' sewer and water systems. The committee made its recommendations in a report to the Sewerage and Water Board. The report is supplied.

I participated in a committee chaired by now retired Judge Miriam Waltzer, established by the Louisiana Supreme Court to report on Women in the Courts, in 1991-1992. My participation was as President of the Association of Women Attorneys, and we facilitated and encouraged participation by women in the community. I have provided a copy of the report, although I did not author it nor was I named as a committee member.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Regular New Orleans City Council Meeting, Saturday, December 11, 2010, City Council Chambers. A video of the meeting is found at http://cityofno.granicus.com/MediaPlayer.php?view_id=3&clip_id=735. My presentation begins roughly at 8:59.

Special Meeting of the New Orleans City Council, December 8, 2010, City Council Chambers. A video of the meeting is found at http://eityofno.granicus.com/MediaPlayer.php?view_id=3&clip_id=733. My presentation begins roughly at 1:08.

New Orleans City Council Criminal Justice Committee Meeting, December 8, 2010. A video of the meeting is found at http://cityofno.granicus.com/MediaPlaver.php?view_id=3&clip_id=734. My remarks begin roughly at 1:15:21.

New Orleans City Council Criminal Justice Committee Meeting, October 6, 2010. A video of the meeting can be found at

http://cityofno.granicus.com/MediaPlayer.php?view_id=3&clip_id=671. My remarks begin at roughly 56:27.

New Orleans City Council Criminal Justice Committee Meeting, June 9, 2010. A video of the meeting can be found at http://cityofno.granicus.com/MediaPlaver.php?view_id=3&clip_id=363. My remarks begin roughly at 47:38.

2011 City of New Orleans, Law Department Budget Proposal, Open and Effective Government, presented to New Orleans City Council, November 11, 2010. Video supplied.

2011 City of New Orleans, Law Department Budget Proposal, Public Safety, Presented to New Orleans City Council, November 9, 2010. Video available online at http://cityofno.granicus.com/MediaPlayer.php?view id=7&clip id=715.

2011 City of New Orleans, Law Department Budget Proposal, Sustainable Communities, Presented to New Orleans City Council, November 1, 2010 Video supplied.

Presentation to Public Belt Railroad Commission, City Council chambers, New Orleans, Louisiana, October 12, 2010. Video supplied.

Presentation to New Orleans City Council, introduced myself and discussed function of the City's law department, May 20, 2010. A video of the meeting is available at

http://cityofno.granicus.com/MediaFlayer.php?view_id=3&clip_id=334. My presentation begins at roughly 1:23:00.

"Expert Testimony on Environmental Justice Issues in Louisiana," Joint Meeting of Louisiana House/Senate: Louisiana Committee on the Environment, March 1998. I have no notes, transcript or recording.

Numerous appearances before the New Orleans City Council, Louisiana Department of Environmental Quality and in public hearings throughout the state of Louisiana on environmental issues from 1992 to 1996. I have no notes, transcripts or recordings of these hearings, but press coverage of several appearances is supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter.

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

February 19, 2011: "Legislative Breakfast," National Coalition of 100 Black Women, Greater New Orleans Chapter. I am Chair of the Public Policy & Advocacy Committee, which put on the program, and so I described the Committee and introduced the panelists: City Council members and in the Mayor's absence, Deputy CAO, Ann Duplesses, Mayor's Commissioner of Health, Dr. Karen DeSalvo and Mayor's Advisor on Economic Development, Aimee Quirk. I have no notes, transcript, or recording. The address of the National Coalition of 100 Black Women is 1925 Adam C. Powell Jr. Boulevard, Suite 1L, New York, New York 10026.

June 24, 2010: "Drafting Alternative Dispute Resolution Laws," Tulane Law School's Annual International Legislative Drafters' Conference. Presentation slides supplied.

June 17, 2010: Moderator, "Mediation Advocacy Workshop," Chair and Moderator, sponsored by the New Orleans Chapter of the Federal Bar Association. I have no notes, transcript, or recording. The address of the FBA is 500 Poydras Street, Room 364, Hale Boggs Federal Building, New Orleans, Louisiana 70130.

December 10, 2009: "Mediation Strategies and Techniques When Settling Cases," CLE sponsored by the New Orleans Bar Association. Program materials supplied.

December 7, 2009: "Quality of Life and Work Balance," Speaker, seminar sponsored by the Quality of Life Committee of the Louisiana State Bar Association. Program materials supplied.

September 10, 2009: Chair and Moderator, "Mediation Workshop," sponsored by the New Orleans Chapter of the Federal Bar Association. I have no notes, transcript or recording, but I wrote an account of the workshop entitled, FBA Sponsors Mediation Workshop at Federal Court, and supplied a copy in response to Question 12(a).

June 25, 2009: "Drafting Alternative Dispute Resolution Laws," 2009 International Legislative Drafting Institute at Tulane Law School. Presentation slides supplied.

April 24, 2009: "Negotiating for Yourself," presented in CLE seminar sponsored by the Louisiana State Bar Association CLE directed to Women Attorneys, section entitled, Running with the Big Dogs without Running Away. I have no notes, transcript, or recording. The address of the Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

February 27, 2009: "What Clients and Participating Attorneys Expect from Mediators" and "Ways to Maximize Your Mediator's Effectiveness," Sponsored by Region V of the National Bar Association in Shreveport Louisiana. I have no notes, transcript, or recording. The address of the NBA is 1225-11th Street, NW Washington, D.C. 20001.

September 19, 2008: "Collaborative Law, Interest-based Negotiation and Valueadded Solutions as used in Mediation," Lafayette Bench Bar Conference. Presentation slides supplied.

June 19, 2008: "Drafting Alternative Dispute Resolution Laws," 2008 International Legislative Drafting Institute at Tulane Law School, 6329 Freret Street, New Orleans, Louisiana 70118. Presentation slides supplied.

March 13, 2008: Moderator, *Powell v. Alabama*, 75th Anniversary Symposium presented by the New Orleans Federal Bar association. I supplied a copy of the article I wrote for the symposium in response to Question 12(a). The article was entitled, 75th Anniversary of Powell v. Alabama Commemorated.

November 19, 2007: "Closing the Deal: A Mediator's Perspective on Negotiating Agreement," presented at Tulane Law School, 6329 Freret Street New Orleans, Louisiana 70118. I used an earlier version of the presentations supplied for the June 19, 2008, June 25, 2009, and June 24, 2010 events.

March 31, 2006: Panelist, "Toxic Torts and Katrina," Hurricane Katrina: Environmental Impact and Lessons on Public Health and Justice Symposium, Thurgood Marshall School of Law, Texas Southern University. I have no notes, transcript, or recording. The address of the school is 3100 Cleburne Street, Houston, Texas 77004.

November 16, 2004: Louisiana Special Education Law, National Business Institute, "Special Education Law Update," "Successful ways to Handle Disciplinary Actions for Special Needs Students," and "Ethics." I have no notes, transcript or recording. The address of the National Business Institute is P.O. Box 3067, Eau Claire, Wisconsin 54702.

Fall 2003 and Fall 2004: "Using Evidence at Trial," presenter for skills course, Loyola Law School. I have no notes, transcript or recording. Patricia Phipps is the Director of the Law Skills program at Loyola University New Orleans and can be contacted at 7214 Saint Charles Avenue, Campus Box 905, New Orleans, Louisiana 70118.

April 30, 2004: School Law in Louisiana, National Business Institute, "First Amendment and Other Constitutional Issues," "Divulging School Records: What is Confidential, What is not?" and "Ethics." I have no notes, transcript, or

recording. The address of the National Business Institute is P.O. Box 3067, Eau Claire, Wisconsin 54702.

October 3, 2003: "Professionalism and the Boomerang Effect, A Day in Federal Court," Louisiana State Bar Association. I have no notes, transcript, or recording. The address of the Louisiana State Bar Association is 601 Saint Charles Avenue, New Orleans, Louisiana 70130.

April 11-13, 2003: "Tiptoeing Towards Trial; Pre-Trial and Discovery Issues," New Orleans Bar Association CLE, Biloxi, Mississippi. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is The Poydras Center, 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

March 6, 2003: "The Fiduciary Responsibilities and Obligations Pursuant to State and Federal Environmental Regulations," New Orleans Bar Association CLE, Seaside, Florida. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is The Poydras Center, 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

February 14, 2002: Recent Developments in Environmental Law, New Orleans Bar Association CLE, Seaside, Florida. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is The Poydras Center, 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

October 20, 1999: "Environmental Racism: Does it really exist?" Loyola Law School, Louis Westerfield Society Speaker Series, New Orleans, Louisiana. I have no notes, transcript, or recording. The address of the society is Loyola University New Orleans, 7214 Saint Charles Avenue, New Orleans, Louisiana 70118.

October 2, 1998: "Basic Issues in Environmental Law," Continuing Legal Education Seminar, Southern University Law Center, Baton Rouge, Louisiana. I have no notes, transcript, or recording. The address of the Southern University Law Center is 2 Roosevelt Steptoe Drive, Baton Rouge, Louisiana 70813.

July 31, 1998: Panel on Environmental Justice, National Association of Black Journalist Conference, Washington, D.C. I have no notes, transcript, or recording. The address of the Association is 1100 Knight Hall, Suite 3100, College Park, Maryland 20742.

April 1, 1998: "Environmental Justice: Balancing the Scales," Air & Waste Management Association, Spring Technical Conference, Baton Rouge, Louisiana. I have no notes, transcript, or recording. The address of the association is One Gateway Center, 3rd Floor, 420 Fort Duquesne Boulevard, Pittsburgh, Pennsylvania 15222.

September 18, 1996: St. Peter Claver Chapter of All Congregations Together meeting. I have no notes, transcript, or recording, but press coverage is supplied.

April 20, 1996: League of Women Voters leadership serninar for high school and college students, Loyola University. I have no notes, transcript, or recording, but press coverage is supplied.

April 16, 1996: Discussion on trash pickup, Aurora Community Association meeting, St. Stephen Lutheran Church. I have no notes, transcript, or recording.

Spring 1995: "Current Urban Environmental Law Issues, Solving the Garbage Crisis," Tulane University Law School Environmental Conference, New Orleans, Louisiana. I have no notes, transcript, or recording. The address of Tulane University Law School is 6329 Freret Street, New Orleans, Louisiana 70130.

October 26, 1994: Panelist, "Update on Recycling," Women for a Better Louisiana meeting. I have no notes, transcript, or recording. The address of the organization is P.O. Box 8361, Metairie, Louisiana 70011.

September 12, 1994: Little Woods Community meeting, Eastshore Village Community Association, Curran Place Community Room. I have no notes, transcript, or recording.

July 6, 1994: Announcement of "Clean Team" proposal, Gallier Hall, New Orleans, Louisiana. I have no notes, transcript, or recording, but press coverage is supplied.

April 5, 1992: Speaker at Andrew Bell Junior High, importance of libraries and reading in my profession. I have no notes, transcript, or recording.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Michelle Krupa, As New Orleans Seeks to Rework Two Trash Deals, Landrieu Says: Other Parishes Get Job Done for Far Less, Times-Picayune, Nov. 11, 2010. Copy supplied.

Frank Donze, Former City Hall Employee Honored, Times-Picayune, Nov. 6, 2010. Copy supplied.

Frank Donze, Landrieu to Rebid Garbage Contracts, Times-Picayune, Nov. 5, 2010. Copy supplied.

Interviews with all major television and radio stations regarding the City's Traffic Camera Program considering Civil District Court Judge's issuance of stay order and Fourth Circuit's lifting of stay, on or about October 5, 2010. I have been unable to obtain copies of these recordings, but press coverage reflecting some of my comments is supplied below.

Staff, Ruling on Traffic Cameras Awaited; Appeals Court Keeps Them Online Until Then, Times-Picayune, Oct. 5, 2010. Copy supplied.

New Orleans Catches Up to Speed, Katrina Connection (blog), Oct. 5, 2010. Copy supplied.

Curt Sprang, Brief: Appeal Court Extends Cameras' Run, WGNO-TV, Oct. 4, 2010. Copy supplied.

N.O. Traffic Cameras to Stay – For Now, WWLTV.com, Oct. 4, 2010. Video news story available at http://www.wwltv.com/news/local/NO-traffic-cams-to-stay---for-now-104279894.html.

Bruce Eggler, Traffic Cameras Survive, So Far, Times-Picayune, Oct. 2, 2010. Copy supplied.

Louisiana: New Orleans Traffic Cameras Under Legal Pressure, the Newspaper.com, Oct. 2, 2010. Copy supplied.

Traffic Camera Violations Still Valid, States News Service, Oct. 1, 2010. Copy supplied.

Statement from City Attorney on Traffic Camera Preliminary Injunction, States News Service, Oct. 1, 2010. Copy supplied.

Appeals Court: Traffic Cameras Again Ticketing in Orleans, WWL.com, Oct. 1, 2010. Copy supplied.

Page Turners - People to Watch in 2010, New Orleans Magazine, Sept. 2010. Copy supplied.

Interview with Lucy Bustamante, WWL television station regarding City's Volunteer Hearing Officer Training for Blight Hearings. August 2010. I have been unable to obtain a copy of this recording.

Mayor Landrieu Plans to Open Full Service Hospital in New Orleans East by Fall 2013, BestofNewOrleans.com Blog of New Orleans, July 16, 2010. Copy supplied (quoting July 15 press conference noted below).

Press Conference to announce renegotiation of City's purchase of Methodist Hospital from UHS from \$40 million to \$15.2 million, July 15, 2010, Mayor's Press Room. I have been unable to obtain a copy of a transcript or recording.

What Makes Lawyers Successful?, The Complete Lawyer, July/August 2008. I have been unable to obtain a copy of this article.

Road Home Becomes a Little Smoother with Help of Loyola's Mediation Clinic, Loyola at a Glance, May 30, 2008. Copy supplied.

Susan Finch, Ag Street Landfill Case Gets Ruling, Times-Picayune, Jan. 27, 2006. Copy supplied.

Gordon Russell, Landfill's Reopening is Raising New Stink; Gentilly Site has Environmental Problems, Say Senators, Others, Times-Picayune, Nov. 21, 2005. Copy supplied.

Jeanmarie Mayfield, Algiers Family Makes World Their Oyster, Times-Picayune, July 21, 2005. Copy supplied.

Deon Roberts, Eastern New Orleans Residents Upset that their Superfund Site is Taken Off EPA Priorities List, New Orleans CityBusiness, Nov. 8, 2004. Copy supplied.

Stephanie Grace, Company Touts its Bid for Sewer, Water Contract; Cost is Higher, but it's Better Deal, Firm Says, Times-Picayune, Feb. 28, 2002, at Metro p. 1. Copy supplied.

Joe Gyan, Jr., "Environmental Racism" Global, Experts Believe, The Advocate, July 31, 2001. Copy supplied.

WDSU, Channel 2, Baton Rouge, LA: Fourth Amendment Issues Involved in Edwin Edwards Trial, May 5, 2000. I have been unable to obtain a copy of this recording.

Coleman Warner, Many Residents Prefer to Check Just One Box on Form, Times-Picayune, Feb. 27, 2000. Copy supplied.

Vicki Ferstel, Environmental Feud Involves Shintech, The Advocate, Nov. 13, 1998. Copy supplied.

Vicki Ferstel, EPA Official Confirms Pro-Shintech Pair's Ouster, The Advocate, Nov. 10, 1998. Copy supplied.

Henry Payne, Green Redlining: How Rules Against "Environmental Racism" Hurt Poor Minorities Most of All, Reason, Oct. 1, 1998. Copy supplied.

Danielle Knight, U.S.-Environment: Problems of "Environmental Racism", Inter Press Service, Sept. 17, 1998. Copy supplied.

Henry Payne, Green Nonsense, Black Losses, The Weekly Standard, Aug. 3, 1998. Copy supplied.

Lolis Eric Elie, Standing Up for Shintech, Times-Picayune, June 24, 1998. Copy supplied.

Lolis Eric Elie, Taking Risks to Do Better, Times-Picayune, June 22, 1998. Copy supplied.

Clark Political Report, taped March 8, 1998, New Orleans, Louisiana, Current Environmental Law Issues. I have been unable to obtain a copy of this recording.

Chris Gray, Shintech Foes, Supporters Face Off, Times-Picayune, Jan. 23, 1998. Copy supplied.

Sara Shipley, Race, Jobs. Pollution in Bayou, Christian Science Monitor, Jan. 12, 1998. Copy supplied.

Tracie Reddick, Environmental Injustice?, Tampa Tribune, Dec. 14, 1997. Copy supplied.

Chris Gray, State Favors Shintech Plant, Opponents Say, Times-Picayune, Dec. 9, 1997. Copy supplied.

Dennis Cauchon, Racial, Economic Divide in La., USA Today, Sept. 9, 1997. Copy supplied.

John McMillan, Hearing Called a Victory, The Advocate, Sept. 3, 1997. Copy supplied.

Frank Esposito, Shintech PVC Plant Steeped in La. Politics, Plastics News, Aug. 18, 1997. Copy supplied.

María Giordano, Groups Intervene to Back Shintech; Jobs are Needed, Attorney Says, Times-Picayune, Aug. 9, 1997. Copy supplied.

Mark Schleifstein, City Drops Fine on Trash Collectors; N.O. Settles for Litter Cans Instead, Times-Picayune, Dec. 17, 1996. Copy supplied.

Mark Schleifstein, A Bumper Crop; Signs Pointing to Broken Laws, Times-Picayune, Nov. 6, 1996. Copy supplied.

James Varney and Mark Schleifstein, Waste Department Seems to Have Cleaned its Mess, Times-Picayune, Aug. 31, 1996. Copy supplied.

James Varney, Political Signs Are Removed by City, Times-Picayune, Aug. 24, 1996. Copy supplied.

Lolis Eric Elie, Collectors Picking Up, Times-Picayune, July 31, 1996. Copy supplied.

James Varney, Trash Hauler, City Hall Take Heat, Times-Picayune, July 19, 1996. Copy supplied.

James Varney, More Garbage Fines Expected, Times-Picayune, July 16, 1996. Copy supplied.

James Varney, Despite Fines, Garbage Pickup Lags, Times-Picayune, July 16, 1996. Copy supplied.

Mark Schleifstein, City Fines Waste Company for Leaving Garbage at Curbs, Times-Picayune, July 13, 1996. Copy supplied.

Stewart Yerton, N.O. Has a Hunch that it Shone, Times-Picayune, June 21, 1996. Copy supplied.

Quasimodo and the Quarter, Times-Picayune, June 19, 1996. Copy supplied.

Andy Seiler, Disney's French Connection, USA Today, June 19, 1996. Copy supplied.

Stewart Yerton, Wide World of Disney Takes Shine to N.O., Times-Picayune, June 16, 1996. Copy supplied.

Christopher Cooper and Mark Schleifstein, Director Circulates Unpleasant Memo, Timcs-Picayune, June 1, 1996. Copy supplied.

Mark Schleifstein, Report: Trucking Waste Best for City, Times-Picayune, May 29, 1996, at B1. Copy supplied.

Alfred Charles, Protest against Cox Produces a Lot of Noise, but Little Else, Times-Picayune, Apr. 6, 1996. Copy supplied.

Cleanup Revives Community Spirit, Times-Picayune, Mar. 31, 1996. Copy supplied.

Valerie Faciane, N.O. 's Goal is Cleanest La. City, Times-Picayune, Mar. 14, 1996. Copy supplied.

Mardi Gras Wildness Gives Way to Lent, Dallas Morning News, Feb. 22, 1996. Copy supplied.

Alfred Charles, Carnival Recycling Reduces Trash Totals, Times-Picayune, Feb. 20, 1996. Copy supplied.

What They're Reading; A Sampling of Local Tastes in Literature, Times-Picayune, Jan. 7, 1996. Copy supplied.

Alfred Charles, Recovery 1 Landfill to Shut Down, Times-Picayune, Dec. 1, 1995. Copy supplied.

Allan Katz Show, Regulations of Landfills and Recycling, Fall 1995, New Orleans, Louisiana. I have been unable to obtain a copy of this recording.

Sunday Morning Journal with Bill Roussel: Current Environmental Issues Affecting Minority Communities, Nov. 21, 1995. I have been unable to obtain a copy of this recording.

Matt Scallan, Study: Share Jeff's Landfill, Times-Picayune, Oct. 28, 1995. Copy supplied.

Pitching In On Recycling, Times-Picayune, Oct. 4, 1995. Copy supplied.

Connie Jackson, Cashing In On Trash. City to Head Off Theft of Recycling Bins, Times-Picayune, Oct. 2, 1995. Copy supplied.

Alfred Charles, N.O. Getting Ready to Recycle; Curbside Bins Going to Homes, Times-Picayune, Sept. 19, 1995. Copy supplied.

Alfred Charles, City Recycling Delayed Again, Times-Picayune, Aug. 30, 1995. Copy supplied.

Katy Read, Algiers Will be First in N.O. to Get Curbside Recycling, Times-Picayune, Aug. 30, 1995. Copy supplied.

Katy Read, Big Pile of Tires Deflated a Bit, Times-Picayone, Aug. 25, 1995. Copy supplied.

Alfred Charles, N.O. Gets \$1.4 Million Grant to Collect 700,000 Old Tires, Times-Picayune, Aug. 17, 1995. Copy supplied.

Alfred Charles, Mayor's Quiet Central America Trip Catches Flak, Times-Picayune, Aug. 12, 1995. Copy supplied.

Alfred Charles, Landfill Crisis is Delayed, Times-Picayune, July 29, 1995. Copy supplied.

Recycling Nearing Reality, Times-Picayune, July 14, 1995. Copy supplied.

Christopher Cooper, N.O. Faces Crisis over Garbage Disposal, Times-Picayune, July 9, 1995. Copy supplied.

Christopher Cooper, N.O. Picks Recycling Director; Cans, Papers to Go Curbside, Times-Picayune, July 6, 1995. Copy supplied.

Alfred Charles, N.O. is Promised Recycling by Sept. 1, Times-Picayune, July 5, 1995. Copy supplied.

Jason Berry, Solving the Garbage Crisis: Eastern New Orleans Residents and the Sanitation Department Grapple with Waste Management Problems, New Orleans City Business, June 19, 1995. Copy supplied.

Matt Scalan, Landfill in Jeff Might be Open Into 1999, Times-Picayune, May 19, 1995. Copy supplied.

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Connic Jackson, Extra Workers Pick Up Pace of Flood Debris, Times-Picayune, May 18, 1995. Copy supplied.

Mark Schleifstein, N.O. Landfill Told to Close in July, Times-Picayune, May 17, 1995. Copy supplied.

Christopher Cooper, 9-Day-Old Trash, Storm Debris Pile Up in Marigny, Bywater, Times-Picayune, May 16, 1995. Copy supplied.

Christopher Cooper, In N.O., Waiting is the Hardest Part, Times-Picayune, May 12, 1995. Copy supplied.]

Valerie Faciane, Nationwide Cleanup to Begin Saturday, Times-Picayune, Apr. 6, 1995. Copy supplied.

Mark Schleißstein, N.O. Lacks Plan for Trash Crisis, Times-Picayune, Mar. 13, 1995. Copy supplied.

John Pope and Connie Jackson, Trash Rises to New Height, Times-Picayune, Mar. 2, 1995. Copy supplied.

Rainy Mardi Gras Leaves New Orleans Awash in Revenue, Dallas Morning News, Mar. 2, 1995. Copy supplied.

The Business Report, with Representative Jon Johnson, Urban Environmental Issues and Their Economic Impact, Spring 1995. I have been unable to obtain a copy of this recording.

Police Getting Jump on Crowd Control, Times-Picayune, Feb. 23, 1995. Copy supplied.

Mark Schleifstein, 5 Dumps Raided, Closed by City, Times-Picayune, Feb. 21, 1995. Copy supplied.

Tyler Bridges, Despite DEQ, Tires Expected to Pile Higher, Times-Picayune, Dec. 27, 1994. Copy supplied.

N.O. Tire Fire Snuffed Out, Times-Picayune, Dec. 6, 1994. Copy supplied.

Tyler Bridges, Defunct Shredder Could End Tire Trouble, Times-Picayune, Nov. 25, 1994. Copy supplied.

Clean Team Sets Sights on East Bank, Times-Picayune, Nov. 18, 1994. Copy supplied.

Paul Atkinson, Algiers Litter Cleanup Recruiting Volunteers, Times-Picayune, Nov. 11, 1994. Copy supplied.

Alfred Charles, N.O. Heaps Praise on Compost Plan, Times-Picayune, Sept. 27, 1994. Copy supplied.

Rhodesia Jackson, Volunteers Clean Up in East N.O., Times-Picayune, Aug. 14, 1994. Copy supplied.

Dawn Ruth, Unpaid Fees Stall Morial's Recycling Plans, Times-Picayune, July 6, 1994. Copy supplied.

Dennis Persica, Club's Trash Dumped in Lap of City, Times-Picayune, June 29, 1994. Copy supplied.

Alfred Charles, N.O. in Urgent Need of Landfill, Panel Says, Times-Picayune, June 27, 1994. Copy supplied.

Karen Gravois, New Machine Touted as Answer to Tire Troubles, Times-Picayune, May 12, 1994. Copy supplied.

Bill Grady, Patrol Down in Dumps about Poor First Year, Times-Picayune, May 9, 1994. Copy supplied.

Courtroom Advocate Program Launched, Times-Picayune, May 6, 1991. Copy supplied.

13. Judicial Office: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held judicial office.

a.	Approximately how many cases have you presided over that have gone to verdict or judgment?						
	ī.	Of these, approximately what p	ercent were:				
		jury trials: bench trials:	% % [total 100%]				
		civil proceedings: criminal proceedings:	% % [total 100%]				
ь.	Provide	citations for all opinions you have	ve written, including concurrences and				

- dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
- 14. <u>Recusal:</u> If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never been a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant
 or a party to the proceeding or by any other person or interested party; or if you
 recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I was appointed to the position of City Attorney for the City of New Orleans in May 2010, by Mayor Mitchell Landrieu. I currently serve in that position.

I was appointed to the position of Director of the Department of Sanitation for the City of New Orleans in May 1994, by Mayor Marc H. Morial. I served in that position until the end of 1996.

I have had no other candidacies for elective office or nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held membership in or rendered services to any political party or election committee that I can recall. I have allowed my name to be listed as a supporter for a number of state court judicial campaigns in Louisiana over the years. Although I cannot recall each instance in which I did so, I believe I was listed as a supporter in the following campaigns: Louisiana Supreme Court Judge Bernette Johnson, Fourth Circuit Court of Appeal Judges Rosemary Ledet (also when she was elected district court judge), Terri Love (also when she was elected district court judge), Patricia Murray, Madeline Landrieu (also when she was elected district court judge), Joan Bernard Armstrong, Charles Jones, Edwin Lombard and Dennis Bagneris; Civil District Court Judges Kern Reese, Tiffany Chase, Michael Bagneris, Piper Griffin, Herbert Cade, Ethel Simms Julian, Nadine Ramsey and Yada McGee; Criminal District Court Judges Arthur Hunter, Camille Buras and Laurie White.

From 1994 to 1996, I recall handing out pamphlets on the weekends prior to elections. I have searched the Secretary of State website to identify which elections I would have been involved with and to the best of my recollection, I believe I handed out pamphlets for the campaigns of Louisiana Supreme Court Justice Bernette Johnson, Fourth Circuit Court of Appeal Judge Patricia Murray and Civil District Court Judge, Orleans Parish, Terry Love. I also believe I was involved in the campaign for a referendum regarding renewal of a bond issue dedicated to infrastructure improvements of Orleans Parish Schools.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
 - whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk:
 - I have not served as a clerk to a judge.
 - ii. whether you practiced alone, and if so, the addresses and dates;

Except for the occasional pro bono advice or acceptance and then referrals to other lawyers made while I was teaching law, I have never practiced law alone. I may have filed one or two cases while I was teaching law just prior to referring to other counsel to preserve the rights of a party.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1988 – 1992 Adams & Reese, LLP 4500 One Shell Square Suite 4500 701 Poydras Street New Orleans, Louisiana 70136 Associate Attorney

1992 – 1994 Tulane Law School Tulane Environmental Law Clinic 6329 Freret Street New Orleans, Louisiana 70118 Environmental Law Teaching Fellow

1994 Christovich & Kearney, LLP 602 Poydras Street Suite 2300 New Orleans, Louisiana 70130 Of Counsel

1996 – 1998 Onebane Law Firm 1200 Camelia Boulevard, #300 Lafayette, Louisiana 70502 Associate Attorney

1998 – 2000 Southern University Law Center 2 Roosevelt Steptoe Drive Baton Rouge, Louisiana 70111 Assistant Professor of Law

2000 – 2003 Milling, Benson, Woodward, LLP 909 Poydras Street, #2300 New Orleans, Louisiana 70112 Special Counsel (2000 – 2002) Equity Partner (2003) 2003 – 2004 Hoffman, Siegal, Seydel, Bienvenu and Centola, LLP 650 Poydras Street Suite 2100 New Orleans, Louisiana 70130 Special Counsel

2003 – 2007; 2009 – 2010 Chaffe, McCall, LLP 1100 Poydras Street, Suite 2400 New Orleans, Louisiana 70163 Special Partner (and I consulted on a case by case basis while teaching in Mediation Clinic at Loyola Law School)

2007 – 2009 Loyola College of Law, Law Clinic, Mediation Section 6363 Saint Charles Avenue New Orleans, Louisiana 70118 Visiting Assistant Clinical Professor of Law

May 2010 – present City of New Orleans Mayor Mitchell J. Landrieu 1300 Perdido Street, Suite 5E03 New Orleans, Louisiana 70112 The City Attorney for the City of New Orleans

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I served as a mediator in the Louisiana Hurricane Mediation Program in 2006 and 2007. After Hurricane Katrina, the Louisiana Department of Insurance established a mediation program to help resolve disputes between insurers and Louisiana policy holders arising from damages to residential property caused by Hurricanes Katrina and Rita. The mediations were paid for by the insurance company and were free to policyholders. I estimate that I mediated more than 100 cases.

As a founding member of Loyola University of New Orleans College of Law Mediation Clinic, I mediated disputes between homeowners and contractors arising out of home repairs and renovations resulting from damages caused by Hurricanes Katrina and Rita and the levee breach. I served as a teaching aid for third year law students, and we mediated over 100 such cases that were referred to us by the Attorney General's Office of the State of Louisiana. Also as part of the Loyola clinic, I mediated

child custody matters referred to us by the Civil District Court for the Parish of Orleans. Child custody issues were exacerbated after Hurricanes Katrina and Rita because many parents ended up in different cities or states from each other and lived and worked under different circumstances. I mediated dozens of child custody cases in an effort to help families resolve such difficult issues in a manner that made the best interest and welfare of the child the first priority.

Working with Criminal District Court Judges for the Parish of Orleans, the New Orleans District Attorney's Office, the State Attorney General's Office, when appropriate, and the New Orleans Public Defender's Office, I also mediated restitution claims involving alleged contractor fraud. These mediations provided a more streamlined and expeditious process to these parties in an effort to relieve an overburdened and badly depleted criminal justice system post-Katrina and Rita.

- 1. Louisiana Hurricane Mediation Program/AAA Mediation: House that once sat on stilt pilings overlooking Lake Ponchatrain was completely destroyed after Hurricane Katrina; only the pilings remained. Home owners' insurance initially paid nothing claiming house destroyed by rising waters which topped 15 feet and because of the flood exclusion in the homeowner's policy. Homeowner needed to demonstrate wind damage was caused as a result of wind before flooding occurred in order to recover any money. Expert reports were submitted by both parties. Eventually wind versus flood damage issue was compromised and settlement reached.
- 2. Louisiana Hurricane Mediation Program/AAA Mediation: Multiple mediations were held between insurance companies represented by insurance adjusters and homeowners holding insurance policies. Those homeowners with attorneys, it appeared, were able to negotiate better settlements, but had to offset their settlements with attorney fees. Therefore, a new business arose: public adjusters assisting homeowners with preparation of their claims for a lower fee than attorneys. While whether public adjusters were practicing law without a license was being decided by the Louisiana Supreme Court, the role public adjusters could play in hurricane mediations became a big issue in settlement negotiations. At times they were kept out of the mediations, and at others they were only allowed to assist in presenting damages. Monitoring the role of the public adjuster and mediating their presence became significant issues in post-Katrina insurance mediations.
- 3. Louisiana Hurricane Mediation Program/AAA Mediation: Property owner made claim for damaged property inside her home due to roof damage during Hurricane Katrina. The property owner produced receipts for the original property, including "price tags" for expensive

oriental rugs that allegedly were damaged by water leaking into the home from the damaged roof. The insurance adjuster had photos from a previous claim by the homeowners suggesting that the rugs were not as unique and expensive as the tags and receipts offered by the homeowner showed. Further, it seems the expensive tags had been taken from rugs in a Magazine Street, New Orleans, rug shop. The tags were traceable and the rugs had never been purchased. A resolution was reached.

- 4. Louisiana Hurricane Mediation Program/AAA Mediation: Homeowners in a gated community in Eastern New Orleans lost everything in their home to Hurricane Katrina and/or flood damages following storm surge and/or levee breach, and had no flood insurance. Their homeowners' insurance company claimed 15 feet of water was cause for entire damage to two story home and personal property and therefore denied coverage. Parts of roof had been torn from the home, allowing negotiation of amounts owed for what could have been destroyed as a result of the wind damage to the roof before flooding occurred. A settlement of a little over a million dollars was reached.
- 5. Attorney General Alleged Contractor Fraud Mediation: Contractor from Texas came to New Orleans to rebuild homes for people without insurance, relying on money from the federally funded Road Home Program to rebuild their homes. Contractor low bidded on many projects, causing him to run out of money before he could complete the home of this elderly St. Bernard Parish woman. The homeowner's five children were persistent in pursuing this contractor because they did not want their aging and now seriously ill mother to die before returning to their family home. The parties agreed to an independent third party contractor who would provide an estimate of the cost and time for completion. The family agreed not to ask that the contractor's license be revoked so that he could go to work for a relative who advanced him nearly \$100,000 to pay the third party contractor to complete the home.
- 6. Alleged Contractor Fraud Restitution Mediation: There were five alleged victims. The contractor was from out of state. I mediated a ceiling and a floor for restitution and other parameters that would satisfy the judge and the prosecutor and fell within a range to which the contractor and his lawyer could agree. I mediated a consolidated figure among the victims for which restitution would be made and mediated how it would be distributed among the victims. The contractor entered a half-way house and employment was secured so payment could be made to the victims. A compromise was reached.
- 7. Alleged contractor fraud: Parties agreed that homeowner's expectations of what the contractor could deliver for price paid was

unreasonable after consulting with three independent contractor "experts." The matter was resolved without involvement of the court or prosecutors.

- 8. Alleged contractor fraud: Mediated a schedule of work and payment between the homeowner and the contractor. The job was completed pursuant to the schedule and the contractor was paid.
- 9. Alleged contractor fraud: Contractor was member of same church congregation as homeowner. He allegedly ran off with renovation money without completing job. In addition to mediating a schedule of repayment of the money owed, the homeowner wanted the contractor to apologize in front of the Congregation. Contractor agrees under the condition that the other church member would help him regain the trust of the Congregation so that he and his family could return to the Church as members.
- 10. Visitation Mediation: Family separated during evacuation prior to Hurricane Katrina. I mediated father's contribution to purchase of mother's home in New Orleans and to tuition at the schools he wanted the children to attend. Father dropped claim for sole custody and attempt to move children to another state. As part of the negotiated settlement the family agreed to enter into professional counseling.

b. Describe:

 i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1988 to 1992, the character of my law practice was that of a large corporate defense firm. I practiced in the areas of financial litigation, commercial litigation, toxic tort litigation, health care law and environmental law and litigation.

From 1992 to 1994, the character of my law practice changed to public interest law and teaching. I represented state, local and national environmental and energy conservation organizations, in opposing permits, policies and laws my clients believed were injurious to the human health and environment of the state.

In 1994, I briefly returned to a corporate defense practice before being appointed as the Director of Sanitation for the City of New Orleans.

From 1996 through May 2010, when I was not teaching, I practiced law with mid-to-large firms defending public bodies, railroads, corporations, businesses and individuals in real estate, environmental, personal injury, insurance, commercial and other business related matters.

In 2006, I began mediating significantly. From 2007 to 2009, when I was not teaching mediation and negotiation, I was primarily a mediator in the public interest area or for parties who could not otherwise afford to litigate or pursue resolution to their disputes.

On May 3, 2010, I was appointed by Mayor Mitchell J. Landrieu to the position of City Attorney for the City of New Orleans. My practice has changed in many respects and expanded in depth and character. As the City's Chief Legal Officer, I am directly involved in the negotiation of all major real estate transactions, cooperative endeavor agreements and other property and tax related and collection and enforcement matters affecting the City and which are largely considered transactional in nature. I am also directly involved in litigation in state and federal courts defending the City in claims ranging from civil rights and other constitutional violations in federal court, to property damage and personal injury as well as appeals from administrative decisions, in state court. I supervise the drafting of city ordinances and city-wide provisions and enforce zoning and other municipal regulatory law. I am directly involved in public records requests and other freedom of information matters.

As the City's chief prosecutor of municipal code and traffic violations, I am responsible for prosecuting 70% of all criminal charges filed in Orleans Parish as well as the staffing and supervision of municipal and traffic court prosecutors.

Finally, in situations when it is necessary to protect the City's interest, we serve as plaintiff's counsel on behalf of the City to pursue lost revenue, exercise duly negotiated contract clauses, and seek compensation for losses sustained by the City due to actions of others.

 your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From 1988 and through 1992, my typical clients were financial institutions in foreclosures and other financial litigation matters, oil and gas companies and various commercial businesses. I was also involved in commercial litigation defending a variety of corporations and businesses in complex litigation. Finally, I defended oil and chemical companies in environmental and toxic tort litigation and in permitting matters.

From 1992 to 1994 I represented public interest and environmental groups in environmental permitting matters, administrative rule making procedures and in public hearings on the siting and permitting of regulated facilities and in regulatory compliance matters.

During the remainder of my practice, until my most recent appointment, I have represented railroad companies in FELA litigation, public bodies in environmental litigation and a variety of companies and business in environmental and real estate matters, developers in land use and construction-related disputes and other corporations and businesses in a variety of business-related transactional and litigated matters ranging from contractual disputes to personal injury to employment-related matters.

Currently, I represent governmental entities and political subdivisions; specifically, the Mayor, City Council for the City of New Orleans, sixteen departments and twenty-three Boards and Commissions, in a wide variety of matters including drafting ordinances, collecting taxes, enforcing city codes and ordinances, negotiating real estate transactions, defending constitutional and civil rights matters, drafting, implementing and enforcing policies, election and voting rights approvals and related issues, defending the city in property and personal injury cases, workers' compensation matters and a variety of other claims and disputes. I am responsible for the prosecution of municipal and traffic matters.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My practice over the years has required me to appear in court frequently.

i. Indicate the percentage of your practice in:

Į.	federal courts:	45%
2.	state courts of record:	45%
3.	other courts:	
4.	administrative agencies:	10%

ii. Indicate the percentage of your practice in:

1.	civil proceedings:	75%
2.	criminal proceedings:	25%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried to verdict approximately 12 cases as chief counsel, and tried to verdict, judgment or final decision approximately 40 as associate counsel.

i. What percentage of these trials were:

1.	jury:	10%
2.	non-jury:	90%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

- 17. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
 - 1. Texaco Exploration v. AmClyde Engineered, USDC, Eastern District of Louisiana, No. 2:99-cv-03623, filed 12/2/99; trial court judgment issued April 5, 2002. During what was the heaviest offshore lift of its time, McDermott dropped Texaco's Petronius Offshore Module, estimated at a loss of \$500 million, into the Gulf of Mexico during the lift. Lloyd's Register of Shipping ("LR"), the oldest classification society in the world, had classed the vessel and had surveyed it prior to the lift. I was co-counsel at trial; prior to trial, I handled all aspects of the case on a day-to-day basis including drafting and editing all pleadings, memoranda and motions, arguing all motions before Magistrate Judge Alma Chasez and taking depositions, including those of experts. I also examined and cross-examined witnesses, and otherwise presented evidence at trial. I made closing arguments (opening statements were waived). We won a judgment in favor of LR and were also granted costs after a six-week trial on the merits. Before an appeal was lodged, we settled. The case was later retried against the remaining defendants. I was involved in the representation from August 1999 through trial and post-trial cost assessment. The case was heard in U.S. District Court Eastern District of Louisiana, Judge Ivan L.R. Lemelle.

My co-counsel were Kenneth Gordon, of Gordon Gordon and Schnapp, P.C., 437 Madison Avenue, 39th Floor, New York, New York 10022, (212) 355-3200; and Richard M. Leslie (retired), Shutts & Bowen, LLP, 100 South Ashley Drive, Suite 1500 Tampa, Florida 33602, (813) 229-8900. Counsel

for Texaco Exploration and Production Inc. and Marathon Oil Company was S. Gene Fendler, Liskow and Lewis, 701 Poydras Street, Suite 5000, New Orleans, Louisiana 70139, (504) 556-4122; Counsel for AmClyde Engineered Products, Inc. was A. Kirk Gasperecz, Adams and Reese, L.L.P., 701 Poydras Street, Suite 4500, New Orleans, Louisiana 70139, (504) 585-0408; Counsel for Williamsport Wireworks Inc. and Lowry Brothers was David F. Beinvenue, Simone, Peragine, Smith and Redfearn, L.L.P., 30th Floor - Entergy Centre, 1100 Poydras Street, New Orleans, Louisiana 70163, (504) 569-2030.

2. Johnson v. Orleans Parish Sch. Bd., No 93-1433 c/w 94-5446, 94-12996 and 95-13271, Civil District Court for the Parish of Orleans, filed 8/31/93. I was lead counsel from 2002 to May 2010, representing Orleans Parish School Board in this class action filed in 1995 against the Board, the City of New Orleans and the Housing Authority of New Orleans ("HANO"). The plaintiffs alleged negligence in the closing of Agriculture Street Landfill, the development of a neighborhood and the construction of Motion School on the site of a former municipal solid waste landfill. Hundreds of millions of dollars were claimed to be due residents, students and former employees of the school (as the class had been certified prior to my involvement in the case). I was successful in minimizing the liability of the School Board to a \$12,000 judgment in favor of the school class representative to be shared by all three defendants, in solido, and only for damages due to emotional distress for her fear of contracting cancer. All three defendants and insurers of the Housing Authority appealed; the Fourth Circuit Court of Appeal found the emotional distress damages to be excessive and reduced it by fifty per cent. Judge Nadine Ramsey presided over the twenty-four day trial.

My co-counsel was Katherine Young, the associate on the file; she no longer lives in Louisiana. (I have been unable to determine her current contact information.) Counsel for plaintiffs was Joseph M. Bruno, Bruno & Bruno, 855 Baronne Street, New Orleans, Louisiana 70113, (504) 525-1353; Counsel for Insurers was Marshall J. Simien Jr., The Simien Law Firm, 1 Lakeshore Drive, #1110, Lake Charles, Louisiana 70629, (337) 497-0022.

3. Rathborne v. Exxon Mobil Corp. (2001-1201.Div. N); Bailey v. Exxon Mobil Corp. (2003-35, Div. B); Brown v. Exxon Mobil Corp., No. 01-12081, Civil District Court for the Parish of Orleans, filed 7/25/01, prior to consolidation, resolved while pending in Civil District Court for the Parish of Orleans, and in various sections based on same successful exception. I represented the primary insurers of Intracoastal Tubular, Inc., an oil field pipe cleaning company, that worked for Exxon and other oil drilling companies in the 1970s. The case involved Technologically Enhanced Radioactive Material ("TERM") exposure and contamination to property and persons during pipe cleaning operation as part of the oil drilling process. Although various venue exceptions had been advanced prior to my entry into the litigation, 1

successfully achieved dismissal on a venue exception based on Louisiana Direct Action statute and La. C.C.P. art. 42, providing leverage to settle the case before plaintiffs would have to refile in the proper venue, which they believed would not be as favorable to their case. I was involved in this litigation from 2005 to 2007.

Counsel for plaintiffs were Michael Stag and Catherine Cummins, Smith Stag Attorneys at Law, 365 Canal Street, Suite 2850, New Orleans, Louisiana 70130, (504) 593-9600; Counsel for Exxon Mobil Corporation was Glen M. Pilie, Adams and Reese, 701 Poydras Street, Suite 4500, New Orleans, Louisiana 70139, (504) 581-3234; Counsel for North River Insurance Company was David F. Bienvenue, Simone, Peragine, Smith and Redfearn, L.L.P., 30th Floor - Entergy Centre, 1100 Poydras Street, New Orleans, Louisiana 70163, (504) 569-2030; and Counsel for Grey Insurance Company was Etienne Balart, Jones Walker, Waechter, Poitevent Carrere and Denegre, L.L.P., 201 Saint Charles Avenue, New Orleans, Louisiana 70170, (504) 582-8000.

4. In re Shintech: Saint James Citizens for Jobs v. La. State Env'l Quality Dep't, Case # C442229, 19th Judicial District Court for the Parish of East Baton Rouge, filed 8/29/97; administrative matter before the Louisiana Department of Environmental Quality. I was lead attorney in the representation of area African-American businesses, local African-American elected officials and the Louisiana Chapter of the National Association for the Advancement of Colored People (NAACP), in support of permits applied for and ultimately granted to Shintech Corp. to build a \$700 million chemical manufacturing plant in Convent, Louisiana, St. James Parish, and in subsequent litigation by environmental organizations, as interveners, appealing the Louisiana Department of Environmental Quality's (LDEQ) decision to issue air permits and local land use permits to Shintech. The United States Environmental Protection Agency delayed issuance of the final and necessary water permit while it considered a complaint of alleged civil rights violations made by environmental organizations against the LDEQ regarding its processes for the issuance of the permits. My clients did not intervene in the EPA procedure. Due to the extensive delays, Shintech withdrew from the St. James project and built a smaller plant in Plaquemines Parish. I was involved in the representation from 1996 to 1998. The appeals from the permitting decisions of the LDEQ were heard by the Honorable Janice Clark, Judge, Nineteenth Judicial District Court, East Baton Rouge, Louisiana.

My co-counsel was James Diaz (retired), Onebane Law Firm, 1200 Camelia Boulevard #300, Lafayette, Louisiana 70508, (337) 237-2660 (Mr. Diaz can now be reached at: (337) 233-6200); Counsel for Shintech and its Affiliates was Robert E. Holden, Liskow & Lewis, 701 Poydras Street, Suite 5000, New Orleans, Louisiana 70139, (504) 581-7979; Counsel for Plaintiffs (Interveners) were Robert Kuchn and Lisa Lavie Jordan, Tulane

Environmental Law Clinic, 6329 Freret Street, New Orleans, Louisiana 70118, (504) 865-5789; Counsel for Louisiana Department of Quality was Meredith Hoag Lieux, P.O. Box 822, Baton Rouge, Louisiana 70884.

5. In Re Supplemental Fuels, Docket # AHD-HX-93054, State of Louisiana Department of Environmental Quality, decision filed 1/24/94. Supplemental Fuels, Inc. ("SFI") sought permits from the Louisiana Department of Environmental Quality ("LDEQ"), and sued when those permits were denied. As a teaching fellow and staff attorney at the Tulane Environmental Law Clinic, I was co-counsel in the representation of Neighbors Assisting Neighbors (NAN), Louisiana Coalition for Tax Justice, and Louisiana Environmental Action Network, in its successful efforts to prevent SFI from receiving the permits to build a massive hazardous waste storage facility in the Carryille/St. Gabriel area, a predominantly African-American community that was already home to ten large chemical plants. As part of the strategy to stop the plant from being built, we filed the first administrative complaint under Title VI of the Civil Rights Act of 1964, as amended, with the United States Environmental Protection Agency, alleging that the Act prohibits discrimination on the basis of race, color or national origin in programs and activities receiving federal financial assistance, and that the LDEQ had demonstrated discrimination in the siting of facilities in African-American communities and in how it treated those communities regarding notice of hearings, production of public records requests and in other instances relating to its processes in awarding permits. I was involved in the representation from 1992 to January 1994, when the LDEQ denied the permits to SFI. Kai Midboe was the Secretary of the Louisiana Department of Environmental Quality and the ultimate agency decision maker.

My co-counsel was Robert Kuehn, now Professor of Law and Co-Director of the Interdisciplinary Environmental Clinic, Washington University Law School, One Brooking Drive, St. Louis, Missouri 63130, (314) 935-5706. Counsel for SFI was William Treeby, Stone Pigman Walther Wittman and Hutchinson, 546 Carondolet Street, New Orleans, Louisiana 70130, (504) 581-3200.

6. Alday v. CSX Transp., Inc., No 03-08154 (N-8) Civil District Court of the Parish of Orleans, filed 5/23/03. I represented CSX Railroad against a FELA claim brought by a plaintiff who sought over \$3 million in damages from injuries sustained when a railcar fell upon her. The plaintiff was the conductor and thus had complete responsibility for the casualty and any alleged negligence that may have occurred. We obtained a directed verdict for our client before the Honorable Ethel Simms Julien, Judge.

My co-counsel was Brent Talbot, Chaffe, McCall, LLP, 2300 Energy Centre, 1100 Poydras Street, New Orleans, Louisiana 70163, (504) 585-7000.

Plaintiff's counsel was Benjamin B. Saunders, Davies-Saunders Law Firm, 400 Mariner's Plaza Drive, Suite 401, Mandeville, Louisiana 70448, (985) 612-3070.

7. City of New Orleans v. Bellsouth Telecomms., Inc., 2:09-cv-00151, USDC, Eastern District of Louisiana. In May 2010, when I began my tenure as City Attorney for the City of New Orleans, this matter was already set for trial. The case involves the question whether the City waived its right to charge a franchise fee to Bellsouth, now AT&T, because the City failed to come to an agreement with Bellsouth as to an alternative method of calculating the fee pursuant to the terms of a prior settlement agreement. After being advised by our transition team that the previous administration budgeted only \$2 million in expected settlement, we changed the strategy of the case. I worked with the Mayor to set out the negotiation strategy and drafted a mediation plan. I fully participated in the mediation, orchestrating the Mayor's participation, identifying the interests of the parties and identifying the parties' best alternatives to a negotiated agreement. Although the case did not resolve in mediation, the process allowed us to change the previous strategy of the case to increase the City's chances for a larger judgment. I directed the strategy, made all decisions and participated in all negotiations associated with the trial of the case. On November 15, 2010, Judge Eldon Fallon ruled in the City's favor, increasing the City's recovery from the anticipated settlement of \$2 million to an estimated \$15 million in back payment and about a 3% per year yield on a telecommunications fee.

Counsel for AT&T Services, Inc. is Carmen Shindala Ditta, 365 Canal Street, Suite 3060, New Orleans, Louisiana 70130, (504) 528-2003.

- Gov't Computer Sales v. State of Louisiana, No. C44589; Nineteeth Judicial
 Court, for the Parish of East Baton Rouge, filed 12/30/97. With me as lead
 trial attorney, we successfully represented the lowest responsive bidder,
 Logicom Systems, Inc., on a state computer hardware contract valued at more
 than \$3 million against challenges by another bidder.
 - My co-counsel were Gerald L. Walter, Jr., Taylor Porter Brooks Phillips, P.O. Box 2471, Baton Rouge, Louisiana 70821, (225) 387-3221; Division of Administration, Office of General Counsel, P.O. Box 94095, Baton Rouge, Louisiana 70804; George John Grazioso, Louisiana Office of State Purchasing, 1201 North Third Street, Suite 2-160, P.O. Box 94095, Baton Rouge, Louisiana 70804. Opposing Counsel was Charles Patin, Jr., Kean, Miller, Hawthorne, P.O. Box 3513, Baton Rouge, Louisiana 70821, (225) 387-0999.
- Collins v. State of Louisiana, No. 237-931, Criminal District Court for the Parish of Orleans. I was appointed by Judge Calvin Johnson to represent an inmate who had been in Angola State Penitentiary for thirty-two years, since he was convicted of aggravated rape at age 17. Collins had been convicted

and sentenced by a jury to life in prison with benefit of parole. At the time his sentence was imposed, however, Louisiana law had been changed to prohibit parole when a life sentence had been imposed for aggravated rape. Collins thus had been issued an illegal sentence under the law. I argued that under the circumstances, the state should be ordered to arrange a parole hearing for Collins, retry him, or release him. Judge Johnson ruled that Mr. Collins must be released.

Opposing counsel was the Assistant District Attorney at the end of Harry Connick's term as District Attorney. I have been unable to determine counsel's name or contact information.

10. Ford v. Murphy Oil Co., 703 So. 2d 542 (La. 1997). I was a member of a team of litigators defending Murphy Oil Company in a proposed class action toxic tort arising out of explosion at the Murphy Oil Refinery in Chalmette, Louisiana and other continuing nuisance claims filed by neighboring residents. I conducted research and drafted supporting memoranda and pleadings and attended hearings. The case became a landmark decision in Louisiana class action and environmental law.

My co-counsel were Samuel LeBlanc and Joel Borrello of Adams and Reese (both now retired). Plaintiff's counsel were Sidney Torres, III and Roberta Burns 8301 West Judge Perez Drive Suite 303, Chalmette, Louisiana 70043, (504) 271-8422.

- 18. <u>Legal Activities</u>: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)
 - Between June and July 2010, I represented the City of New Orleans, and with only a 30 day window before closing, renegotiated the purchase of Methodist Hospital in New Orleans, down from \$40 million dollars to \$15.25 million to save the tax payers millions of recovery dollars that now can be used on other projects.
 - 2. Lead negotiator for the City of New Orleans, in the renegotiation of three garbage collections contracts entered into by the previous administration and extended during transition into our administration. We expect that the newly negotiated contracts will save the city several millions of dollars for the year 2011 and for the remainder of the contract term. Not only did we negotiate a lower garbage collection price (as of this date we have renegotiated all three collection contracts), the new lower price includes recycling a service the City of New Orleans has not been able to provide to its citizens since before Hurricane Katrina, five years ago.

- Member of a working group of Criminal Justice Leaders in the City of New Orleans
 examining the reduction of the size of the jail as new construction is required due to
 massive flooding damages sustained as a result of Hurricane Katrina.
- 4. In conjunction with the City Council Criminal Justice Committee, Criminal Justice leaders, including me, offered amendments to the City Code that would make state misdemeanor charges municipal violations, thereby freeing the police, the District Attorney and the criminal courts to focus on more violent crimes. The amendments were adopted by the New Orleans City Council on December 16, 2010.
- 5. Working with the United States Department of Justice to address systemic problems in the New Orleans Police Department.
- Lead Counsel, negotiator and strategist in civil rights actions filed against the City of New Orleans as a result of alleged actions taken by police officers in the days immediately following Hurricane Katrina.
- 7. As Director of Sanitation for the City of New Orleans from 1994 to 1996, I managed the city's department responsible for collection, transportation and disposal of municipal solid waste, waste tire program, and started the City's first curb-side recycling program. I was responsible for enforcement of the City's Sanitation code and for putting closure plans in place for two solid waste disposal facilities owned or operated by the city. Additionally, I was responsible for the supervisions of eight departmental divisions consisting of 175 employees and an annual budget of \$23 million and contractual commitments of over \$100 million. I led negotiations with regulatory bodies, drafted bid specifications and agreements, testified before governmental bodies, drafted and negotiated contracts and was a consensus builder on key environmental issues in the city.
- 8. From 2004 to 2010, I served on the Louisiana Attorney Disciplinary Board. During this time, I served on hearing committees and participated in writing recommendations of appropriate disciplinary action.
- 19. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.
 - 1992 1994: Tulane Law School, Tulane Environmental Law Clinic, Teaching Fellow This clinical course covered Environmental Law and Advocacy, Civil Procedure, Administrative Procedure, Evidence, Professional Responsibility, and Trial Skills. I do not have a copy of the syllabus.

1998 – 2000: Southern University Law Center, Assistant Professor of Law. I do not have copies of the syllabi for these courses.

- Environmental Law and Toxic Tort This course covered federal Clean Water Act, Clean Air Act, Solid Waste Disposal Act or RCRA, CERCLA, NEPA and other federal laws regulating pesticides and other toxins; it also distinguished between environmental law and regulation and toxic tort cases employing principals of negligence and property law and environmental justice principals
- Federal Civil Procedure was taught using the Rules of Federal Procedure and case law applying the FRCP
- Sale and Lease of Property was taught using the Louisiana Civil Code and case law applying the Code
- Professional Responsibility was taught using the Model Code of Professional Conduct as a guide and casebook with case study examples and word problems
- Family Law was taught using the Louisiana Civil Code and casebook Conflicts of Law was taught using casebook which provided guiding principles to apply when deciding the laws of the case
- 2007 2009: Loyola Law School, Stuart H. Smith Law Clinic and Center for Social Justice
 - Clinical Instruction was in the Mediation Section of the Law Clinic (Syllabus supplied)
 - Mediation & Arbitration was taught with a casebook and interactive problemsolving exercises (Syllabus supplied)
- 20. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.
 - I do not expect to receive any deferred income or future benefits from any sources of my own income, other than retirement benefits.
- 21. <u>Outside Commitments During Court Service</u>: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.
 - I have no plans, commitments or other arrangements to pursue outside employment during my service with the court should I be chosen to serve.
- 22. <u>Sources of Income</u>: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Form.

23. Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If I am confirmed, I would submit to the clerk of court a list of parties, interests and financial arrangements that should trigger automatic recusal. Examples of such matters would be those involving my husband, who is an attorney, the company for which he works, and the City of New Orleans (my current employer) for a specified amount of time. In addition, in an effort to identify other potential conflicts of interest that are not apparent or known to me at the time of my submitting a list of automatic recusals, I would review the general facts of each assigned case and, guided by the principals embodied in Canon 3 of the Code of Conduct for United States Judges, 28 U.S.C. § 455, and other applicable provisions, I would make an initial determination as to whether a conflict of interest exists.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will follow the guidance embodied in Canon 3 of the Code of Conduct for United States Judges, 28 U.S.C. § 455, and other applicable provisions.

25. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

There have been many times over the course of my career where I have devoted my practice to serving those who would not otherwise have meaningful access to the legal processes. Further, I have offered my services for reduced fee rates to governmental entities and in other instances where parties were in some way disadvantaged and unable to pay the full rate for my services. Moreover, the types of mediation services I have provided in the past are aimed at providing a mechanism of conflict resolution to those who are least able to otherwise engage in a process that would allow their concerns to be

heard because of the cost of such litigation and the scarcity of lawyers who could spend such time on a resolution without compensation.

Finally, in the past I have readily offered pro bono advices to families with children with learning differences to help them identify the available resources and empower them with the knowledge of what services and accommodations are mandated in favor of their children.

26. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I received a call last summer inviting me to participate in an informal interview process established by Senator Mary Landrieu, conducted by a committee she assembled to do her initial vetting. The interview occurred on August 7, 2010. Several weeks after the interview, I received a call from Senator Landrieu's office informing me that I had been recommended to her by the committee and to set up a meeting with the Senator. On October 14, 2010, I met with Senator Landrieu to discuss my background, experiences and interest in the position. On November 2, 2010, I received a call from Senator Landrieu informing me that she had chosen to recommend me for consideration by President Barack Obama for appointment as Judge to the United States District Court for the Eastern District of Louisiana

Since November 9, 2010, I have been in contact with pre-nomination officials at the U.S. Department of Justice. On December 16, 2010, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. The President submitted my nomination to the Senate on March 2, 2011.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

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Ì	Rev. 1/2010	

FINANCIAL DISCLOSURE REPORT Required by the Ethics

Rev. 1/2010	NOMINATION FILING in Government det of 1978 (5 U.S.C. app. §§ 101-111)					
I. Person Reporting (last n	•	2. Court or Organization	3. Date of Report			
Joliveite Brown, Neure	tle V.	U.S. District Court, Eastern District of Louisians	03/10/2011			
Title (Article III judges le magistrate judges in U.S. District Judge	oficenc earlive or scolor status; dicato faill- or part-time)	So. Report Type (check appropriate type) 6. Reporting Peril Nombustion. Date 034/02/2011				
7. Chambers or Office Add Law Department City of New Orleans 1300 Perdido Street, Sui New Orleans, Louisians	ite SEO3	8. On the basis of the information contained in this Report and any modifications performing the sector, it is, in my opinion, in compliance with applicable laws and regulations. Ravicwing Officer				
Control of the Contro		ctions accompanying this form must be followed. Complete e A where you have no reportable information. Sign on last pa				
	Reporting buildideal only; see pp. 9-13 of filing i portable positions.)	feritmissaver)				
	POSITION	NAME OF ORGANI	ZATION/ENTITY			
3. Director		Federal Bar Association, New Orleans Chapt	a			
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s. ·						
II. AGREEMEN	TS. (Reporting Individual only; 200 pp. 14-16	of filing instructions.)				
NONE (No reg	portable agreements.)					
. DATE		PARTIES AND TERMS				
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2.						
3.						

FINANCIAL DISCLO	SURE REPORT	Name of Person Reports	E		Date of Report
Page 2 of 6		Jolivette Brown, Nec	nette V.		03/10/2011
III. NON-INVESTMEN	NT INCOME. (Reporting	र श्रिकी लेवेंगवी कार्य इक्काइन; ३८० इ	gs. 17-24 of filling instruction	EL)	
A. Filer's Non-Investment I	исоте				
NONE (No reportable	non-investment income.)				
DATE		SOURCE AND T		INCOME rs, not spouse's)	
1. 2011 (YTD)	City of New Orlean	3-salary			\$28,984.50
2. 2010	City of New Orlean	e-estary			\$88,484.09
3, 2010	Chaffe, McCall LI	P-selary			\$41,666.64
4.2009	Chaffe, McCall, LL	P-salary		***	\$46,866.64
5. 2009	Loyola University-s	alary			\$55,532.25
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IV. REIMBURSEMEN					
NONE (No reportable					
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1. Exempt	- Martin Harrison Har				
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FINANCIAL DISCLOSUR Page 3 of 6	RE REPORT	Name of Person Reporting Joliveite Brown, Namette V.	erensky jest a	Date of Reports > > <
V. GIFTS, (Includes thase in spouse an	d dependens chilêren; see pp. 2	28-31 of filing instructions.)		
NONE (No reportable gifts	.)			
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VL LIABILITIES. (Includes that		ldren; see pp. 32-33 of filling instructions.)		
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FINANCIAL DISCLOSUR	E REPOR	tT.	Name of Perso	n it sporting					Data of Report
Page 4 of 6			Jolivelle Bro	wa, Name	ette V.				03/10/2011
VIL INVESTMENTS and T NONE (No reportable incom				Includes tha	ue of spouse and a	lependera eki	ldren; <u>se</u>	: руз. 34-60	of filing lattractions.)
A. Description of Assets (including trest assets)	Inco	B, ome during rting period	C- Gross value at end of reporting period			Trensució	D. ones droning	reporting	period
(there were more and amon Place "(K)" after each amon exempt from prior disclosure	(1) Amount Code I (A-II)	(2) Type (e.g. div., rent. or one)	(1) Value	(2) Velue Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Dato nanAld/yy	(3) Valua Code 2 (J-P)	(4) Gain Code 1 (A-II)	(5) Ideatiny of buyen/soller (if private transaction)
I. Energy Common Stock		None	J	Т	Exempt				
2. U.S. Savings Bonds		None	К	T					
 Riverland Credit Union Checking and Money Market 	٨	Interest	L	ī					
4. Pirst Bank and Trust Checking Accoun	ıl A	Interest	1	T					
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FINANCIAL DISCLOSURE REPORT	Nation of Person Reporting	Date of Report
Page 5 of 6	Jolivette Browa, Nannezze V.	03/10/2011
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VIIL ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Report)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 6 of 6	Jolivette Brown, Nannette V.	03/10/2011
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IX. CERTIFICATION.

I certify that all information given above (helvollag information perusining to my sponse and milnor or dependent civildren, if any) is senset, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-distribute.

I further certify that carroed lecome from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of S U.S.C. app. § 581 et. seq., S U.S.C. § 7353, and Judicial Conference regulations.

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILPULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. 1991, § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Colombus Circle, N.E. Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS	_			LIABILITIES			
Cash on hand and in banks		80	000	Notes payable to banks-secured (auto)		21	000
U.S. Government securities-Series EB bonds		42	000	Notes payable to hanks-unsecured			
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule	1	025	000
Real estate owned-see schedule	1	200	000	Chattel mortgages and other Hens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		335	000	- student loan		52	000
Cash value-life insurance							
Other assets itemize:	-						
- Entergy vested stock options		125	000				
				Total liabilities	1	098	000
				Net Worth		б84	000
Total Assets	1	782	000	Total liabilities and net worth	1	782	000
CONTENGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	Νo		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Mortgages Payable

Personal residence

\$ 893,000

Home equity line of credit
Total Real Estate Mortgages Payable

132,000 \$ 1,025,000

AFFIDAVIT

I, Nannette Jolivette Brown I, Nannette Jolivette Brown , do swear that the information provided in this statement is, to the best of my knowledge the statement is to the best of my knowledge. of my knowledge, true and accurate.



CITY OF NEW ORLEANS LAW DEPARTMENT 1300 PERDIDO STREET, 5TH FLOOR EAST NEW ORLEANS, LOUISIANA 70112 TELEPHONE: (504) 658-9800 TELECOPIER: (504) 658-9868

MITCHELL J. LANDRIEU

NANNETTE JOLIVETTE BROWN CITY ATTORNEY

تقالها أواز ويعيو ولأما

March 31, 2011

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, DC 20510

Dear Senator Leahy:

In connection with my nomination to be United States District Judge for the Eastern District of Louisiana, enclosed please find a DVD containing news clippings of press conferences held regarding traffic camera litigation and the re-negotiation of Methodist Hospital in New Orleans for which I provided comment. Although I requested these recordings prior to submission of my Senate Judiciary Questionnaire, they were only made available to me after the questionnaire was submitted. Thank you in advance for your consideration and please feel free to contact me with any questions.

With kind regards

Cc: Honorable Charles E. Grassley

AN EQUAL OPPORTUNITY EMPLOYER

Senator Coons. Thank you, Ms. Brown. Mr. Kuntz.

STATEMENT OF WILLIAM F. KUNTZ II, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Mr. Kuntz. Thank you very much, Mr. Chairman, and thank you so much, Senator Grassley, for being here. Can you hear me now? Can you hear me now?

Senator Coons. Yes.

Mr. Kuntz. Thank you.

Senator Coons. Thank you.

Mr. KUNTZ. Not my usual problem. I apologize. Mr. Chairman and members of the Committee, I too would like to thank President Obama for nominating me, and I would like to thank Senator Schumer for recommending me to this august Committee.

I am pleased and honored to introduce to you today my wife of 33 years, Dr. Alice Beal, who is the director of palliative care for the Veterans Administration of the New York Harbor System, who is here today. I would also like to introduce my daughter, Katharine Lowell Kuntz, who is completing her second year at Tufts Medical School, the school attended by her mother. My wife's cousin and best friend, Alletta Belin, who is a distinguished environmental attorney now working with great distinction in the Department of the Interior, is here today. And, finally, Mr. Joel Motley, who is president of Motley Communications and a friend since college and law school. Joel first introduced me to his parents, Joel, Sr., and the Honorable Constance Baker Motley, more than 30 years ago. He has been a friend and an inspiration throughout my adult life.

Our other two children, William Thaddeus and Elizabeth Ann, apologize for not being here today. Will is the assistant director of professional scouting for the New York Yankees and is taking his law school exams at the night division at Fordham. And Lizzie is completing her final set of exams and papers today and is scheduled to graduate from Harvard College later this month.

I thank you so very much for this opportunity to appear before you today. My parents are both deceased, but I am sure they are with us in spirit today, and I thank you so much.

[The biographical information of Mr. Kuntz follows:]

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

William Francis Kuntz, II

2. Position: State the position for which you have been nominated.

United States District Judge for the Eastern District of New York

3. <u>Address</u>: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Baker Hostetler, LLP 45 Rockefeller Plaza New York, New York 10111

4. Birthplace: State year and place of birth.

1950; New York, New York

- 5. <u>Education</u>: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.
 - 1972 1979; Harvard University, joint program with the Graduate School of Arts and Sciences and the Harvard Law School; J.D., 1977; Ph.D., 1979
 - 1972 1974; Harvard University Graduate School of Arts and Sciences, M.A., 1974
 - 1968 1972; Harvard College, A.B., 1972
- 6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2005 – Present Baker Hostetler LLP 45 Rockefeller Plaza New York, New York 10111 Partner

2004 – 2005 Constantine Cannon (now Constantine Aborn) 450 Lexington Avenue New York, New York 10017 Of Counsel

2001 – 2004 Torys LLP 237 Park Avenue New York, New York 10017 Partner

1994 – 2001 Seward & Kissel, LLP One Battery Park Plaza New York, New York 10004 Partner

1986 – 1994 Milgrim Thomajan Jacobs & Lee 405 Lexington Avenue New York, New York 10005 Partner

1987 – 2003 Brooklyn Law School 250 Joralemon Street Brooklyn, New York 11201 Associate Professor of Law (Adjunct)

1978 – 1986 Shearman & Sterling 599 Lexington Avenue New York, New York 10022 Associate 1972 – 1978 Harvard University Graduate School of Arts and Sciences 1350 Massachusetts Avenue Cambridge, Massachusetts 02138 Tutor

Summer 1976
United States Attorney for the Southern District of New York
One Saint Andrew's Plaza
New York, New York 10007
Summer intern

Summers 1974, 1975 Children's Defense Fund 25 East Street, NW Washington, D.C. 20001 Summer Intern

Summer 1973 Harvard University Eliot House Cambridge, Massachusetts 02138 Assistant Senior Tutor

Summer 1972 Harvard University Cambridge, Massachusetts 02138 Summer Assistant to the Dean of Students

Other Affiliations (uncompensated except as noted):

2004 – present The Brooklyn Hospital Center 121 DeKalb Avenue Brooklyn, New York 11201 Board of Directors

2003 – present
Federal Bar Council and Federal Bar Foundation
123 Main Street, Suite L100
White Plains, New York 10601
Vice President (Council) (2004 – 2009)
Director (Foundation) (1993 – 1996; 2003 – 2004)
Secretary (Foundation) (1996 – 1999)

2002 – present
New York Lawyers for the Public Interest
151 West 30th Street, 11th Floor
New York, New York 10001
Director Emeritus (2010 – present)
Board of Directors (2002 – 2009)

2001 - present
The Academy of Political Science
1527 New Hampshire Avenue, NW
Washington, DC 20036
Board of Directors (2001 - present)
General Counsel (2004 - present)

1997 - present Lawyers' Committee for Civil Rights Under Law 1401 New York Avenue NW, Suite 400 Washington, DC 20005 Board of Trustees

1996 – present
The Practising Law Institute
810 Seventh Avenue, 21st Floor
New York, New York 10019
Board of Directors (1996 – present)
Chair, Executive Committee of the Board of Directors (2006 – present)

2005 – 2010 The Legal Aid Society of New York 199 Water Street New York, New York 10038 Board of Directors

1987 – 2010 Civilian Complaint Review Board of the City of New York 40 Rector Street New York, New York 10006 Commissioner (received per diem)

2005 – 2008 Association of the Bar of the City of New York 42 West 44th Street New York, New York 10036 Vice President (2006 – 2008) Chair of the Executive Committee (2005 – 2006) 1997 – 1999 New York City Transit Museum 130 Livingston Street, 10th Floor Brooklyn, New York 11201 Board of Directors

1994 – 1997 Brooklyn Navy Yard Development Corporation Building 292 63 Flushing Avenue, Unit 300 Brooklyn, New York 11205 Board of Directors

1991 – 1996 New York County Lawyers Association 14 Vesey Street New York, New York 10007 Board of Directors

Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

I have not served in the military. I registered for selective service.

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

The Tribune Society Distinguished Service Award (2011)
New York Super Lawyers (2006 – 2010)
Volunteer Lawyers Project of the Brooklyn Bar Association, Leadership Award (2008)
Graduate Prize Fellowship, Harvard University

9. <u>Bar Associations</u>: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Advisory Committee on Civil Practice in The State of New York (1997 – 2010)
Advisory Council of Chief Judge Jonathan Lippman to The Attorney Emeritus Program (2010 – present)
American Bar Association (1979 – present)
American Bar Foundation (2009 – present)

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American Law Institute (2000 - 2010)
Association of the Bar of the City of New York
        Vice President (2006 - 2008)
        Chair, Executive Committee (2005 - 2006)
       Member, Executive Committee (2004 - 2008)
       Chair, Municipal Affairs Committee (1992 - 1993)
Brooklyn Bar Association
        Committee on the Judiciary (2002 - 2010)
Commercial Courts Task Force (1995 - 1999)
Departmental Disciplinary Committee of the New York State Supreme Court, Appellate
Division, First Department (2001 - present)
       Policy Committee (2005 - present)
Federal Bar Council and Federal Bar Council Foundation
       Vice President (Council) (2004 - 2009)
       Director (Foundation) (1993 - 1996; 2003 - 2004)
       Secretary (Foundation) (1996 - 1999)
       Executive Committee (2007 - present)
       Awards Committee (2004 - 2006; 2009 - present)
       Special Committee on Prison Reform (2009 – 2011)
       Winter Bench & Bar Planning Committee (2004 – 2011)
              Chair (2008 - 2009)
       Nominating Committee (2005 - 2008)
       Membership Committee (2003 - 2006)
Fund for Modern Courts
       John J. McCloy Memorial Award Event Committee (2002 - 2003)
Lawyers' Committee for Civil Rights Under Law
       Board of Trustees (1997 - present)
Legal Aid Society of New York
       Board of Directors (2005 - 2010)
Magistrate Judge Selection Committee for the Eastern District of New York (2000 -
Magistrate Judge Selection Committee for the Southern District of New York (2008 -
Metropolitan Black Bar Association (2008 - present)
National Bar Association (2008 - present)
New York County Lawyers Association
       Board of Directors (1991 - 1996)
New York County Lawyers Foundation (2004 - 2010)
New York Lawyers for the Public Interest
       Director Emeritus (2010 - present)
       Board of Directors (2002 – 2009)
The Practising Law Institute
       Board of Directors (1996 - present)
       Chair, Executive Committee of the Board of Directors (2006 - present)
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10. Bar and Court Admission:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York, 1978

There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Second Circuit (1992)
United States Court of Appeals for the Third Circuit (1983)
United States Court of Appeals for the Tenth Circuit (1985)
United States District Court for the Southern District of New York (1978)
United States District Court for the Eastern District of New York (1979)

There has been no lapse in membership.

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

The Academy of Political Science

Board of Directors (2001 – present)
General Counsel (2004 – present)

Brooklyn Friends School
Board of Trustees (2005 – 2008)

The Brooklyn Hospital Center
Board of Directors (2004 – present)

The Brooklyn Navy Yard Development Corporation
Board of Directors (1994 – 1997)

The Feerick Center for Social Justice and Dispute Resolution at The Fordham University School of Law (2006 – present)

New York City Transit Museum

Board of Directors (1997 – 1999)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the listed organizations above presently engages or formerly engaged in discrimination of any kind.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Werner L. Polak and William F. Kuntz II, Report of the Chair of the Board of Trustees and Chair of the Executive Committee, Practising Law Institute Annual Report, 2009. Copy supplied.

Gerald Walpin & William Francis Kuntz II, In Defense of a Judge, Nat'l L.J., Nov. 24, 2008. Copy supplied.

Civilian Complaint Review Board Policy Change Grossly Unfair to Police Officers, Staten Island Advance, Oct. 21, 2007. Copy supplied.

Comment under an on-line article entitled, Only Mel Weiss Can Save Milberg Weiss Now, CNNMoney.com, July 10, 2007. Copy supplied.

Referees and Special Masters Chapter 30 in <u>Commercial Litigation in New York State Courts</u>, Second Edition, Thompson West, 2005 through present with supplement pocket parts. Copy supplied.

Taking & Defending Depositions in Commercial Cases, Practising Law Institute Course Handbook, June 1998, reprinted in identical form in 1999, 2000 and 2001. Copy of the 1998 version supplied.

Preparing and Conducting Opening and Closing Arguments: Case Analysis and Theory Development, Practising Law Institute Course Handbook, August 18, 1993. Copy supplied.

<u>Criminal Sentencing in Three Nineteenth Century Cities: A Social History of Punishment in New York, Boston, and Philadelphia. 1830-1880</u> (Garland Press, 1988). Copy supplied.

Reviewing the Reviewers, The Crimson, Jan. 15, 1974. Copy supplied.

I performed research for Marian Wright Edelman's publication, <u>Children Out of School in America</u> (The Children's Defense Fund, 1974), but I did not take part in writing the report.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

In 2009, I co-chaired the Subcommittee on Addressing Inadequate Representation of the Study Group on Immigrant Representation. A member of the subcommittee, Carcen Shannon, wrote a report on behalf of the entire subcommittee entitled, Regulating Immigration Legal Service Providers: Inadequate Representation and Notario Fraud. A copy of the report is supplied.

In 2007, I participated in an Education Working Group as part of the The Pipeline Crisis's initiative Winning Strategies for Young Black Men. A copy of the report is supplied.

In 2005, while I was serving as chair of the Executive Committee of the New York City Bar Association, the Committee reported that then-Judge Samuel Alito was qualified to serve as a Supreme Court Justice. A copy of the press release of the announcement is supplied.

In January 2004, while I was serving as a member of the Unified Court System of New York's Advisory Committee on Civil Practice, the committee released a report to the Chief Administrative Judge of the Courts of the State of New York. A copy of the report is supplied.

In 1997, I co-chaired the Subcommittee on the Profile of the Courthouse and its Users of the Race and Ethnicity Committee of the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts. Based on the work of all the committees, the committee chairs then created a report entitled, Report of the Working Committees to the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts. A copy of the report is supplied. The Task Force also released a final report based on all findings and reports; this report was entitled, Report of the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts. A copy of the report is supplied. While I did participate

in discussions and meetings as co-chair of the Subcommittee, I did not directly contribute to the writing of either of these reports.

Civilian Complaint Review Board

From October 1987 to 2010, as a Commissioner on the Civilian Complaint Review Board, I have contributed to reports concerning the activities of the Board. These reports are listed below. Unless indicated below, copies of reports are available on-line at http://www.nyc.gov/html/cerb/html/reports.html.

Recommendation to retrain officers patrolling buildings owned by the New York City Housing Authority as outlined in October 27, 2010 Press Release.

Recommendation to Issue Order Regarding Proper Handling of Police Union "Courtesy" Cards, Nov. 9, 2006.

Recommendation to Improve Training for Policing Demonstrations, May 9, 2006.

Recommendation that the NYPD Enhance Training Regarding Strip Search Procedures, May 12, 2004.

Recommendation to Show "No-Knock" Search Warrants upon Request, Nov. 20, 2003.

Recommendation to Institute Measures to Facilitate Identification of Subject Officers at Demonstrations, Feb. 15, 2003.

Recommendation that the New York City Police Department Create Search Warrant Database, Jan. 2003.

Recommendation about Officer Refusal to Provide Name and/or Shield Number, 2003.

CCRB Street Stop Encounter Report, June 2001.

75th - 81st Precinct Study, Aug. 11, 1998.

Hollow-Point Bullet Report, July 8, 1998.

Analysis of Arrest Situations Resulting in Civilian Complaints, Dec. 1992. Copy supplied.

Nationwide Survey of Civilian Complaint Systems, Sept. 1992. Copy supplied.

Final Report on the Tompkins Square Park Incident, Apr. 10, 1989. Copy supplied.

Report of the Civilian Complaint Review Board, Oct. 1987 – Dec. 1989. Copy supplied.

CCRB Annual Reports, 1988 to 2009. Reports issued in 2001 and after are available at the above web site. Copies of reports issued prior to 2001 are supplied.

CCRB Mid-Year Status Reports, 1994 to 2010. Reports issued after 2002 are available at the above web site. Copies of reports issued prior to 2002 are supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

In 2008, I signed a petition to the Regents of the University of the State of New York in support of a provisional charter for Brooklyn Friends School. A copy of the petition is supplied.

On October 3, 1992, I testified in my capacity as a former CCRB member before the New York City Council Public Safety Committee about a proposed referendum on removing Police Department employees from the CCRB. I have been unable to obtain a transcript or recording, but press coverage is supplied.

On October 31, 1988, I testified in my capacity as a member of the CCRB during a hearing held by Brooklyn Borough President Howard Golden. The hearing examined the functions and operations of the CCRB. I have been unable to obtain a transcript or recording, but press coverage is supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Practising Law Institute

I have taught as a faculty member of the Practising Law Institute on several of its panels. Below is a list of my speaking events that I was able to identify. I do not have notes, transcripts or recordings for all events and have indicated where I

have materials. The address of the PLI is 810 Seventh Avenue, New York, New York 10019.

July 2009: Ethics in Context.

October 7, 2008: "The Deadly Dozen: 12 of the Most Common Mistakes Lawyers Make When Dealing with Clients," Bridge the Gap I: Ethics and Skills for Newly Admitted Attorneys 2008. Video supplied.

July 30, 2008 and August 8, 2006: Ethics for Commercial Litigation.

Other Events

February 24, 2011: Distinguished Service Award recipient, Black History Month Program and Reception, New York State Unified Court System. Remarks supplied.

June 16, 2010: Remarks at induction of Denny Chin, Circuit Judge for the U.S. Court of Appeals for the Second Circuit. Remarks supplied.

July 22-24, 2009: Lecture, New York State Judicial Conference on Legal Ethics, showing the film Judgment at Nuremberg and leading a two day discussion on the role of judges and lawyers in the criminal regime of Nazi Germany. I have no notes, transcript or recording. The conference itself does not have a physical address, but the address of the New York State Unified Court System is Office of Court Administration, Room 852, 25 Beaver Street, New York, New York 10004.

June 17, 2009: Introduced Judge Theodore T. Jones, Brooklyn Bar Association Volunteer Lawyers Project Award Ceremony. I have no notes, transcript or recording. The address of the Brooklyn Bar is 123 Remsen Street, Brooklyn, New York 11201.

March 11, 2009: Presenter, Subcommittee work on "Addressing Inadequate Representation," Fordham Levine Forum. I have no notes, transcript or recording, but a copy of the report on which my presentation was based is supplied in response to 12(b).

June 5, 2008: Award recipient, Brooklyn Bar Association Volunteer Lawyers Project, remarks on civil legal services. I have no notes, transcript or recording, but Brooklyn Bar coverage is supplied. The address of the Brooklyn Bar is 123 Remsen Street, Brooklyn, New York 11201.

July 13, 2007: Co-presenter, Education Working Group Report, Winning Strategies for Young Black Men, The Pipeline Crisis Second Plenary Session. I have no notes, transcript or recording, but a copy of the report on which my presentation was based is supplied in response to 12(b).

October 2006: Mock Supreme Court argument, Office of the Appellate Defender. I have no notes, transcript or recording. The address of the Office of the Appellate Defender is 11 Park Place, Suite 1601, New York, New York 10007.

Summer 2006: Judge, Mock Trial with Baker Hostetler summer associates. I have no notes, transcript or recording. The address for Baker Hostetler is 45 Rockefeller Plaza, 11th Floor, New York, New York 10111.

December 13, 2005: Remembrance of Hon. Constance Baker Motley, New York County Lawyers Association Annual Dinner. A copy of my remarks is supplied.

October 5, 1998: Mock Supreme Court argument, Office of the Appellate Defender. I have no notes, transcript or recording. The address of the Office of the Appellate Defender is 11 Park Place, Suite 1601, New York, New York 10007.

April 15, 1998: Panelist, "Police Violence: Causes and Cures," Brooklyn Law School. A transcript of my remarks is supplied.

August 25, 1988: Public meeting with residents of Tompkins Square Park, St. Brigid's School, discussed role of Civilian Complaint Review Board in the investigation of police conduct during demonstrations in the Tompkins Square neighborhood. I have no notes, transcript or recording. The address of the CCRB is 40 Rector Street, New York, New York 10006.

e. List all interviews you have given to newspapers, magazines or other
publications, or radio or television stations, providing the dates of these
interviews and four (4) copies of the clips or transcripts of these interviews where
they are available to you.

Sam Stanton, Newsmaker/Gerald Walpin, Ex-Inspector General, Sacramento Bee, July 12, 2009. Copy supplied.

Noeleen G. Walder, Local Attorneys Support Walpin, Watchdog Dismissed by Obama, New York Law Journal, July 1, 2009. Copy supplied.

Interview Taped on January 23, 2009 with Professor Douglas Muzzio, Political Analyst, City Talk on CUNY TV, Professor School of Public Affairs, Baruch College/CUNY. Video available at

http://www.cuny.tv/series/citytalk/listen.lasso?-database=CUNYPROG&-response=detail2.lasso&-table=webprogdetail2&-sortField=TapeDate&-sortOrder=descending&-op=eq&SeriesTitle=City%20Talk&-op=neq&MediaAvailable=%3d%3d&-op=lte&TapeDate=12%2f31%2f2009&-op=gte&TapeDate=1%2f1%2f2009&-maxRecords=1&-skipRecords=32&-search.

Christine Hauser, Complain: Boa: d Lawyers Will Assist at Police Trials, New York Times, Sept. 11, 2008. Copy supplied.

Lynn E. Judell, First-Year Associates; You Can't Beat Pro Bono, New York Law Journal Magazine, Sept. 2008. Copy supplied.

Member Profile, New York County Lawyer, Sept. 2007. Copy supplied.

Jaime Adame, Questioning Police Statistics for Crime and Cases of Misconduct, Gotham Gazette, Apr. 4, 2005. Copy supplied.

Daniel J. Wakin, Gibson's Movie Goes to Church, New York Times, Apr. 9, 2004. Copy supplied.

William K. Rashbaum, *Police Abuse Cases Rising, Complaint Review Board Says*, New York Times, June 3, 2003. Copy supplied.

Thomas Adcock, Law Firm Consortium Grapples with Diversity, New York Law Journal, June 7, 2002. Copy supplied.

Jane Gross, Public Lives; Looking for a Line the Police Shouldn't Cross, New York Times, Jan. 2, 2001. Copy supplied.

Douglas Montero, Lost Paperwork & Lost Trust, New York Post, Dec. 18, 2000. Copy supplied.

William K. Rashbaum, Safir Says Civilian Panel Exceeds its Authority in Citing Officers for Lying, New York Times, Jan. 8, 2000. Copy supplied.

Jodi Wilgoren, Federal Inquiry of Police Draws Mixed Reaction, New York Times, July 11, 1999. Copy supplied.

William K. Rashbaum, CCRB Memo Sez City Auditing Lost Cases, New York Daily News, Nov. 21, 1998. Copy supplied.

Mark Fazlollah, Audit: N.Y. Police Panel Let Misconduct Cases Lapse, Philadelphia Inquirer, Sept. 3, 1998. Copy supplied.

Michael Cooper, Police Say Panel Withheld Findings Against 108 Officers, New York Times, Sept. 2, 1998. Copy supplied.

Michael Cooper, Chief to Leave the City's Police Review Board, New York Times, Aug. 19, 1998. Copy supplied.

Dan Barry, Mayor Defies Bar Association and Reappoints Queens Judge, New York Times, Apr. 1, 1998. Copy supplied.

Pete Bowles and Mohamad Bazzi, Family Court Judge's 10-Year Term Decried, Newsday, Apr. 1, 1998. Copy supplied.

Michael Cooper, New York Undercounted Civilian Complaints Against Police, New York Times, Dec. 11, 1997. Copy supplied.

Alice McQuillan, Cop Brutality Complaints Undertallied, New York Daily News, Dec. 11, 1997. Copy supplied.

Liz Willen, Budget Cuts on Mayor's Agenda, Newsday, Nov. 15, 1997. Copy supplied.

Alice McQuillan, Rudy's Budget Ax Looms Over CCRB, New York Daily News, May 15, 1997. Copy supplied.

Barbara Benson, Lawyers Find Being Small is Liability, Crain's New York Business, May 15, 1995. Copy supplied.

Garry Pierre-Pierre, Examining a Jump in Police Brutality Complaints, New York Times, Feb. 22, 1995. Copy supplied.

Keith A. Saunders, Contemporaries Disagree with Mansfield Remarks, The Crimson, Mar. 24, 1993. Copy supplied.

Bob Liff, Review Board Vacancies Raise Ire, Newsday, Mar. 18, 1992. Copy supplied.

Paul Moses and Rita Giordano, Review's In: Few Are Satisfied with Board, Newsday, Mar. 31, 1991. Copy supplied.

Alison Carper, Cop Watchdog Panel Seeks More Power, Newsday, Feb. 24, 1990. Copy supplied.

Mitch Gelman, Complaint Board Draws Complaints, Newsday, Aug. 7, 1989. Copy supplied.

Rose Marie Arce, Tompkins Square a Year Later, Newsday, Aug. 4, 1989. Copy supplied.

Press Conference, Civilian Complaint Review Board, draft report of the board, Apr. 18, 1989. I have no notes, transcript or recording.

Mitch Gelman and Richard Esposito, '87 Cop Complaints Fall, But '88..., Newsday, Nov. 26, 1988. Copy supplied.

Don Terry, Board Cites Dip in Complaints Against Police, New York Times, Nov. 24, 1988. Copy supplied.

13. <u>Judicial Office</u>: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

a.	Approximately how many cases have you presided over that have gone to verdict or judgment?								
	i.	Of these, approximately what p	ercent were:						
		jury trials: bench trials:	% % [total 100%]						
		civil proceedings: criminal proceedings:	% % [total 100%]						
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- Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
- 14. <u>Recusal:</u> If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.
 - I was appointed by Mayors Edward Koch, David Dinkins, Rudy Giuliani, and Michael Bloomberg, and confirmed by the New York City Council, to serve on the New York City Civilian Complaint Review Board from 1987 through 2010.
 - I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.
- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever

held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1994, I served on George Pataki's gubernatorial transition team as a member of the criminal justice committee.

16. Legal Career: Answer each part separately.

- Describe chronologically your law practice and legal experience after graduation from law school including:
 - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I was never a sole practitioner.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1978 – 1986 Shearman & Sterling 599 Lexington Avenue New York, New York 10022 Associate

1986 – 1994 Milgrim Thomajan Jacobs & Lee 405 Lexington Avenue New York, New York 10005 Partner

1994 – 2001 Seward & Kissel, LLP One Battery Park Plaza New York, New York 10004 Partner 2001 – 2004 Torys LLP 237 Park Avenue New York, New York 10017 Partner

2004 – 2005 Constantine Cannon (now Constantine Aborn) 450 Lexington Avenue New York, New York 10017 Of Counsel

2005 - Present Baker Hostetler, LLP 45 Rockefeller Plaza New York, New York 10111 Partner

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or an arbitrator.

b. Describe:

 the general character of your law practice and indicate by date when its character has changed over the years.

The general character of my law practice throughout my career has been commercial litigation. I have represented clients including the most sophisticated financial services institutions in the world, the largest industrial entities, and the most demanding general counsel and business clients in a challenging array of litigations including international letters of credit, tender offer litigation, business frauds – including the Wedtech and Madoff cases – and creditors rights cases.

 your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My practice has been principally in the area of financial services litigation for banks, brokerage houses, and insurance companies. I have also handled bankruptcy and creditors rights litigation. At present my law firm, Baker Hostetler, is counsel to my partner Irving Picard as the Trustee in the Madoff case. I am heading one of the many feeder fund litigation teams addressing the issues presented by this case. My practice involves

designing and executing discovery programs, taking and defending depositions, making and opposing motions for full and partial summary judgment where appropriate, analyzing electronic discovery issues for clients, educating junior partners and associates on the intricacies of trying cases, arguing appeals, and ensuring that we comply with the highest standards of ethics in the practice of the law, a topic on which I lecture at the Practising Law Institute.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Virtually all of my practice has been litigation, and I have made occasional court appearances throughout my career.

i. Indicate the percentage of your practice in:

1. federal courts: 60%
2. state courts of record: 30%

3. other courts:

4. administrative agencies: 10%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 100%

2. criminal proceedings:

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately 50 cases, of which I was sole counsel in 25, chief counsel in 10 and associate counsel in 15.

i. What percentage of these trials were:

1. jury: 50% 2. non-jury: 50%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, arnicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases

were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- 1. Wedtech Adversary Proceedings, Bankruptcy No. 86 B 1236 (HCB) (SDNY) (1986). After Wedtech filed for bankruptcy, I served as counsel to Citibank, N.A. in its capacity as a member of the Wedtech Official Unsecured Creditors Committee bringing numerous actions to recover property for the estate. The Hon. Brian Cogan (United States District Judge, Eastern District of New York) served as counsel to the Committee during his practice as a partner at Stroock & Stroock & Lavan. The case was pending for several years in the United States Bankruptcy Court, Southern District of New York.

Counsel for the Creditors Committee:
Brian Cogan
Then a Partner at Stroock & Stroock & Lavan
Now United States District Judge for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

2. The Bank of Nova Scotia v. Lawaetz, District of the Virgin Island and Third Circuit, published opinions at 728 F.2d 177 (3d Cir. 1984); 653 F. Supp. 1278 (D.V.I. 1987). I tried a series of cases and argued appeals to the Third Circuit Court of Appeals representing the Bank of Nova Scotia against its hotelier borrower and his St. Croix Hotel Corporation, involving the valuation of a series of complex corporate notes and interest rate changes over a decade of dealing. The Bank had been found to have committed fraud for the first time in its history prior to my involvement in the case. The Third Circuit reversed the adverse jury findings against The Bank of Nova Scotia and ordered new trials on both liability and damages claims. The parties subsequently resolved the action consensually.

Opposing counsel: Joel Holt 2132 Company Street, Suite 2 Christiansted, VI 00820 340-773-8709

3. Bao v. Bank of America, N.T., No 84 Civ. 6013 (John F. Keenan, United States District Judge for the Southern District of New York; February 3, 1986). I was counsel with other attorneys at Shearman & Sterling for Citibank, N.A. in a case in which plaintiff depositors brought an action against the defendant banks for repayment after the banks were forced to close and to relocate after the Vietnam War. The complaint was held barred by the statute of limitations and the doctrine of equitable estoppel did not defeat the defense. The case was significant in the further development of law in the Second Circuit confirming the situs of the debt as the place of deposit in an extremely important holding for the financial services industry in New York.

Opposing counsel:
Arthur M. Boal, Jr.
Boal, Doti & Larsen
New York, New York
The firm no longer exists, but the phone no. for Mr. Boal is 303-670-5710.

Andrew J. Connick
Paul T. Shoemaker
Kelley A. Cornish
Milbank, Tweed, Hadley & McCloy
One Chase Manhattan Plaza
New York, New York 10005
212-530-5000

4. Spitzer v. Gen. Electric Co., Case Index No. 400927/00. I represented the General Electric Company in an action brought by the State of New York before Justice Louise Gruner Gans in the Supreme Court of New York County. The case was decided in July of 2001. The action alleged that General Electric had engaged in deceptive business conduct in connection with a recall of dishwashers in 1999. The Court found by memorandum decision dated January 16, 2001 that GE had acted deceptively in connection with a recall of certain models of dishwashers it had manufactured and sold. I worked with GE, counsel for the Attorney General and the Court to facilitate the recall and repair of the product.

Opposing counsel: Christine Morrison Assistant Attorney General 120 Broadway New York, New York 10271 212-416-8000 5. Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC v. Beacon Associates LLC (Hon. Burton R. Lifland, Bankruptcy Court Judge, Southern District of New York) SIPA Liquidation No. 08-01789. This is the SIPC liquidation arising from the Ponzi scheme of Bernard L. Madoff and Bernard L. Madoff Investment Securities LLC. I am heading one of several of our firm's feeder fund teams litigating against and negotiating with the large corporate and partnership entities that steered investors to Madoff. The cases are ongoing and relatively new, but my involvement in our firm's efforts has already resulted in considerable recoveries for the estate, some of which have been publicly reported in the courts and in the legal press following the case.

Opposing counsel: Lewis Liman Cleary, Gottlieb Steen and Hamilton One Liberty Plaza New York, New York 10006 212-225-2000

Tab Rosenfeld Rosenfeld and Kaplan 535 Fifth Avenue, Suite 1006 New York, New York 10017 212-682-1400

6. Mayer v. Sutcin Holding Corp., Arbitration before Arbitrator Frank Liantonio of Cushman and Wakefield (1986). This was a lengthy and contentious arbitration held at the Association of the Bar of the City of New York over many days involving the valuation of the ground lease of the Cinema 1 and 2 Theatres on the Upper East Side of Manhattan. These theatres had been the first art house multi-plexes in New York and the twenty-year renewals were of great value to the litigants: to have the lease valued as a theatre would mean a great saving to the corporate owner as opposed to having the valuation done at the highest and best use levels. The result was a valuation as a theatre rather than highest and best use.

Opposing counsel: H. Richard Penn 118 East 60th Street New York, NY 10022 212-751-0718

7. Citibank v. Plapinger, 66 N.Y.2d 90, 495 N.Y.S.2d 309, 485 N.E.2d 974 (1985). I was one of the principal authors of the brief for this action, argued by another Shearman & Sterling attorney, which was ultimately resolved in the New York Court of Appeals. The Court upheld the sanctity of absolute and unconditional personal guarantees and limited the ability to use oral evidence to modify written agreements by violating the

bar and merger language of corporate guarantees when executed, as here, by sophisticated borrowers advised by counsel.

Opposing counsel:
Owen McGivern (deceased)

8. Burson-Marsteller, LLC v. Wachovia Bank, N.A. v. Morgan Stanley and Discovery Bank, Docket Number 06 Civ 00121 (Judge Deborah A. Batts); United States District Court, Southern District of New York. I was lead counsel for Morgan Stanley in this action brought initially by the complaint of Burson-Marsteller, L.L.C. against Wachovia Bank alleging the improper cashing of a series of checks presented by fictitious payees. Extensive claims, cross-claims and third party claims were alleged as the details of the fraud were uncovered. Eventually, given that Baker Hosteller had representational relationships with each of the banking defendants added, we had to withdraw as counsel with the consent of the court and all parties.

Opposing counsel: Jenifer Tafet Klausner Davis & Gilbert, LLP 1740 Broadway New York, New York 10019 212-468-4800

John A. Nocera Rosner, Nocera & Ragone, LLP 110 Wall Street, 23rd Floor New York, New York 10005 212-635-2244

James J. Coster Satterlee Stephens Burke & Burke, LLP 230 Park Avenue New York, New York 10169 212-818-9200

9. Laro Services Sys., Inc. v. New Fulton Fish Mrk. Coop., Docket Number 112884/05, Supreme Court New York County (Justice Carol Edmead), appeal to the Appellate Division First Department (2005). I was lead counsel in this litigation to defeat the challenge of Petitioner Laro Service System, Inc. to the decision by the Business Integrity Commission of New York granting the Cooperative an unloading license at the New Fulton Fish Market at Hunts Point in the Bronx, New York. The litigation also involved the move of the New Fulton Fish Market from its traditional commercial leasehold space on the East side of Manhattan. The action was resolved after trial and appeals to the satisfaction of all parties.

Opposing counsel: Randy Mastro Gibson Dunn & Crutcher LLP 200 Park Avenue New York, New York 10166 212-351-3825

10. Devito v. AmTrust Bank, Case Number 1:09-cv-03858 (BMC) (2009). This class action is pending in the United States District Court for the Eastern District of New York (Hon. Brian Cogan) having been filed on September 4, 2009. I am counsel for AmTrust Bank defending a class action brought challenging the legitimacy of fees consumers paid to financial services institutions at closing – a "Table Funding Fee" of approximately \$350. The plaintiffs assert that the claims violate the Real Estate Settlement Procedures Act of 1974, Sections 8(b), 12 U.S.C. 2607(b) ("RESPA") and Section 349 of New York General Business Law – Deceptive Acts and Practices, N.Y. GBL Section 349.

Opposing counsel:
Oren Giskan
Catherine Anderson
Giskan Solotaroff Anderson & Stewart, LLP
11 Broadway, Suite 2150
New York, New York 10004
212-847-8315

Cory L. Zajdel Z Law, LLC 8830 Orchard Tree Lane, Suite 117 Towson, Maryland 21286 443-632-3010

18. <u>Legal Activities</u>: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).

I have served as a special master and as a referee in approximately ten (10) cases, having received appointments from the Hon. Denny Chin of the United States District Court for the Southern District of New York; the Hon. Arthur M. Schacht of the New York State Supreme Court, Kings County, the Hon. Edward Rappaport of the New York State Supreme Court, Kings County (ret.), and the Hon. Marsha L. Steinhardt, for the Supreme Court, New York State, Kings County.

As a Commissioner of the CCRB from the Fall of 1987 through November 1, 2010, I have reviewed thousands of complaints filed by ordinary citizens against police officers

employed by The New York City Police Department. The complaints properly under the jurisdiction of the CCRB fall in one or more of these four categories and did not include official corruption cases: Excessive Force, Abuse of Official Authority, Discourtesy to a member of the public, and/or Offensive Language directed to a member of the public including ethnic slurs, racial slurs, gender related slurs, sexual orientation slurs, national origin slurs, and religious slurs. The abbreviation of F.A.D.O. (Force, Abuse, Discourtesy, Offensive Language) governs the activities of the Board. Each case is assigned to one or more investigators who then interviews the complainant, any public witnesses to the alleged event, any police officer witnesses to the alleged event, and then finally the police officer who was the subject of the complaint. The CCRB has subpoena power, and so medical and other records are also obtained as part of the record of each case. Under a now longstanding Memorandum of Understanding between the CCRB and the NYPD, as well as the governing statutes, the NYPD provides documents to the CCRB upon request. The CCRB investigators then prepare a written report of each case, and submit it to a Panel consisting of three Commissioners for review, report and recommendation to the Police Commissioner. The recommendations are not binding, but are advisory in nature. The range of recommendations includes substantiation of the allegations of a given complaint with an attendant recommendation of punishment within a range of possible punishments (charges and specifications; command discipline; warnings) to exoneration of all the allegations of a given complaint. The CCRB also has a mediation program that allows, in a range of cases, for the citizen complainant and the subject police officer to agree to a mediation of the complaint at the CCRB with professionally trained mediators agreed upon by both parties. The Police Commissioner usually elects to follow the recommendations of the CCRB, but is not required to do so. The complainant and the police officer are informed of the disposition of the case recommended by the CCRB, and the reasons for the disposition. The deliberations of the CCRB with respect to particular cases are confidential, although the CCRB does publish monthly statistics concerning the nature of complaint (i.e. the particular category under the F.A.D.O. jurisdiction), the precinct location of the complaints, the demographics of the individuals involved in the complaints, and any statistically observed trends reflected by the complaints. The CCRB also periodically issues reports on important issues related to Police Civilian relations, such as hollow point bullets, repairs of doors mistakenly destroyed in exigent circumstances or warranted searches by police officers, and stop and frisk encounters. Those reports are all available on the CCRB web site.

I have performed no lobbying activities on behalf of any client or organization.

19. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

For sixteen years (1987-2003), I taught a course in American Legal History as an adjunct professor of law at Brooklyn Law School. I used the Presser and Zaindland case book entitled, Law and Jurisprudence in American History: Cases and Materials. I do not prepare any syllabi.

20. <u>Deferred Income/Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None, other than the standard payout from my vested pension 401K plan with Baker Hostetler and my personal rollover IRA.

 Outside Commitments During Court Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None, other than to continue as a member of the Board of the Practising Law Institute, which does no fundraising. I would resign all other board affiliations.

22. <u>Sources of Income</u>: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

There are no financial arrangements that are likely to present potential conflicts-of-interest. My spouse, Dr. Alice Beal, M.D., is Director of Palliative Care for the New York Harbor Healthcare System Veterans Administration. My son is the Assistant Director for Baseball Operations for The New York Yankees. I would certainly recuse myself from any cases in which the Veterans Administration or The New York Yankees were parties. Moreover, I would consult the Code of Conduct for United States Judges and other relevant canons and statutory

provisions, and consult with my colleagues on the bench for additional guidance as appropriate.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would consult with my colleagues on the bench, and retain ethics counsel to advise me with respect to any such potential conflict. If confirmed, I would carefully apply the recusal statues, the relevant canons of the Code of Conduct for United States Judges. I would also consult Professor Stephen Gillers, Barbara Gillers and/or Michael Ross, ethics experts whom I have known for many years through Bar Association activities, for guidance.

25. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have devoted thousands of hours in my capacity as faculty member and trustee of The Practising Law Institute. I have devoted many hours to the work of the Civilian Complaint Review Board whose per diem payment is substantially less than the hourly rate I charge at my law firm. My work with the Federal Bar Council, the Brooklyn Hospital Corporation, the Association of the Bar of the City of New York, the New York Lawyers for the Public Interest and the Kings County Inns of Court and the Lawyers Committee for Civil Rights has also been pro bono.

26. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I submitted a completed Confidential Questionnaire for U.S. District Court Candidate to the Screening Committee for Senator Charles E. Schumer in September of 2009. I met with that Committee in October of 2009. I subsequently met with Senator Schumer and his staff in October of 2010. Shortly thereafter I received a phone call from pre-nomination officials at the Department of Justice, and have been in contact with them since that time. On January 11, 2011, I interviewed with attorneys from the White House Counsel's Office and

the Department of Justice. On March 9, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10 FINANCIAL DISCLOSURE REPORT Report Required by the Ethics in Government det of 1978

Rev. 1/2010 NO	MINATION FILING	(3 U.S.C. app. §§ 101-111)
•		
1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Kuntz, William F.	Castern District of New York	03/10/2011
Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	Sa. Report Type (check oppropriate type)	6. Reporting Period
U.S. District Judge	Nomination, Date 03/09/2011 Initial Annual Final	01/01/2010 to 02/28/2011
7. Chambers or Office Address	5b. Amended Report	
Baker Hostetler, LLP 45 Rosckufeller Plaza	 On the basts of the information contained in this Report in medificatious pertaining thereto, it is, in my opinion, in a with applicable laws and regulations. 	and any compliance
New York, New York 10111 11th Floor	Reviewing Officer	Date
		
IMPORTANT NOTES: 71 checking the NONE box for	he instructions accompanying this form must be followed. Comple each part where you have no reportable information. Sign on la	ete oli ports, si page.
. POSITIONS. (Reporting Individual only; see pp. 9-1)	t of filling instructions.)	
NONE (No reportable positions.)		
POSITION	NAME OF ORGA	ANIZATION/ENTITY
. Partner	Baker Hostetler, LLP	
I ACDEPMENTS		
I. AGREEMENTS. (Reporting individual only; see / NONE (No reportable agreements.)	pp. 14-16 of filing instructions.)	
DATE	PARTIES AND TERMS	

FINANCIAL DISCLOSURE	REPORT	Nume of Person Repor	ring		Date of Report			
Page 2 of 11		Kuutz, William F.	Kuntz, William F.					
III. NON-INVESTMENT INC	OME. (Revora	ing judjeldual and spouse: se	e pp. 17-24 of filling ingervesion	<u> </u>				
A. Filer's Non-Investment Income								
NONE (No reportable non-inves	itment income	.)						
DATE		SOURCE AND	ГУРЕ	(you	INCOME irs, not spouse's)			
1, 2010	Civilian Complaid	nt Review Board, NYC (Po	r Diem)		\$5,670.00			
2. 2010 I	Baker Hostetler, L	LP (Pariner Salary)			\$305,000.00			
3. 2009	Baker Hosteller, I	LP (Partner Salary)			\$350,000.00			
4. 20(1)	Baker Hustetler, L	LP (Partner Salary Annua	dized Basis)	***	\$345,000.00			
5. 2009	Civilian Complain	st Review Board (Per Dies	n)		\$16,704.00			
6.								
7.								
NONE (No reportable non-inves	ilment income	SOURCE AND	<u>rype</u>					
1. 2010	Department of Ve	terens Affairs, salar,						
2. 2010	Long Island Colle	ge Hospital, honorarium						
3. 2011	Department of Ve	terans Affairs, salary						
4.								
IV. REIMBURSEMENTS – prans (Includes those to spouse and dependens children; see pg NONE (No reportable reimburs)	s. 25-27 of filing ins							
SOURCE DAT	es	LOCATION PURPOSE ITEMS PAID OR						
1. Exempt								
2.								
3.								

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 3 of 11	Kuutz, William F.	03/10/2011
5.		
FINANCIAL DISCLOSURE REPORT Page 4 of 11	Name of Person Reporting	1
rage 4 of 11	Kentz, William P.	63/10/2011
V. GIFTS. (Includes those to spouse and dependent children; see ;	pp. 18-31 of filling instructions.)	
NONE (No reportable gifts.)		
SOURCE	DESCRIPTION	VALUE
1. Exempt		
2.		
3,		
4.		
5.		
VI. LIABILITIES. (Includes shore of spouse and dependent	children; seepp. 32-33 of filing instructions.)	
NONE (No reportable liabilities.)		
CREDITOR	DESCRIPTION	VALUE CODE
1.		
2,		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 5 of 11			ear [Name of Perso Kuntz, Wiff		03/10/2011					
VII. INVESTMENTS and TRUSTS—income, value, monactions (includes those of spouse and dependent children; see pp. 14-60 of filling instructions.) NONE (No reportable income, assets, or transactions.)											
	A. Description of Assets (including trust assets)		A. me during rting period	Gross v	C. Hue at end ing period	D. Transactions during reporting period					
	Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code I (A-H)	(2) Type (e.g div., read or ins.)		(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, rodemption)	(2) Date mm/dd/yy	(3) Value Code 2 (3-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/selfer (if private transaction)	
1.	Fidelity Growth & Income Retirement Fund	D	Int/Div	. 0	T	Exempt					
2.	Merrill Lynch High Income Fund	E	Int./Div	. N	Т						
3,	Affac Inc.		None	К	Ŧ						
4,	AOL inc.		None	3	Т						
5.	Abbott Laboratories	В	Dividen	d K	Т						
6.	Air Products & Chemicals Inc.	A	Dividen	d K	τ						
7.	Altria Group, Inc.		None	L	T						
8.	American Express Co.		None	к	Т					,	
9.	Anglo American PLC ADR		None	К	Т						
10.	Ansheuser-Busch Index Spons		None	к	Т						
11.	Anys inc.		None	i	τ						
12	Apple Inc.		None	K	т						
13.	Automatic Data Processing Inc.	В	Dividen	d L	T						
14.	Avon Products Inc.		None	L	τ						
15.	Bank of America Corporation		None	к	т						
16.	Brinker Intl. Inc.	Α	Dividen	d K	Т						
ŧ7.	Bristol Myers Squibb Co.		None	K	Ţ						
(S 2. V (S	contex Guin Cudes: A #\$1,000 or less or Colume B1 and IM) # #\$50,001 -\$100,000 alba Cuder 3 # #\$500,001 -\$500,000 F3 #\$25,000 or 500,000 F3 #\$25,000,001 -\$50,000 F3 #\$25	,000,	2 - \$1,001 - \$2 G - \$1,001 - \$2 K - \$15,001 - \$ O - \$500,001 -	\$1,000,000 \$50,000 \$1,000,000	L -550,00 P1 =51,00	00,001 - \$5,000,000 00,001 - \$1,000,000 000,001 - \$3,000,000 000,000,000	H2 ~Mo: M ~\$100	1 - \$15,000 Ump \$5,00 ,001 - \$250 100,001 - \$2	000,000 000	E=515,00) - 530,000	

FINANCIAL DISCLOSURE REPORT			₹T	Name of Perso		Date of Report				
Pa	ge 6 of 11		Kuntz, Will		03/10/2011					
VI)	. INVESTMENTS and TRU	ISTS -	income, valu	, transactions	(Includes the	ne of spouse and i	lependent chi	ldren; sce	pp. 34-80	of filing immerions.)
	NONE (No reportable income, a	ssets, or		ons.)						
	A. Description of Assets (including trust assets)	Icpo	B. me during ming period	Circus vi of report	C. due at end ring period		Transacti	onu chris	reporting	
	Place "(X)" after each asset exempt from prior disclosure	(1) Amosupt Code I (A-H)	(2) Type (e.g. div., sent, or int.)		(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, seli, tederaption)	(2) Date mmAdd/yy	(3) Value Code 2 (J-P)	(4) Guin Code I (A-H)	(5) Identity of buyer/seller (if private transaction)
18.	Chevron Corp.	A	Dividend	L	T		T			
19.	Western Asset NY Muni Money Market Fund C1 A	^	Divident	l N	Т					
20.	Cocs-Cala Co.	A	Dividend	ı J	Т					
21.	Walt Disney Co.	^	Divident	K	T					
22.	Dominion Resources Inc.		None	К	τ					
23.	E.I. Du Pont de Mours & Co.		None	к	Т					
24.	Ernerson Electric Co.	^	Dividen	L	T					
25.	Exxon Mabil Corp.	В	Dividend	L	Т					
26.	Frontier Communications Corp.	A	Dividend	ı J	Т					
27.	General Electric Co.	^	Dividend	3	Т					
28.	General Mills Inc.	٨	Dividend	М	T					
29.	Glaxosmithkline PLC SP ADR		None	к	T					
30.	Hubbell Inc. Class B		None	к	T					
31.	Intel Corp	^	Dividend	,	Т					
32.	ІВМ		None	L	Т					
33.	Juliuson & Johnson	1	None	K	Т					
34.	Koninklijke Philips	A	Dividend	ı	т					
								<u> </u>		
2. V	A = \$1,000 or loss for Columns B1 and D4) for Solution B1 and D4) for Solution B1 and D4) for Solution B1 and D4) for Solution B1 for Solution		B =\$1,001 · 12 G =\$100,001 · K =\$15,001 · 5 O =\$500,001 -	\$1,000,000 \$0,000	C =12,501 H1 =51,00 L =550,00	0,000,000,000,000 00,000; - \$5,000,000 00,000; - \$1,000,000	0,22= C 0M= 511 012= M	01 - \$15,00 re duu \$5,0 0,001 - \$75 100,001 - \$1	100,000 1,000	E =315,001 - 530,000

FINANCIAL DISCLOSURE REPORT Page 7 of 11			1	tame of Person Kuntz, Willi		03/10/2011				
VII	. INVESTMENTS and TR	USTS _ :	income, value	, minsactions (Anduda the	se of spouse and d	ependens chi	luren; sec	pp. 34-60	of filing instructions.)
	NONE (No reportable income,	assets, or	transactio	ons.)						
	A. Description of Assets	Inco	9. me during		C. Nuc et cod		Transactio	D.		eriod
	(including trust assets)	перот	ning period	of report	ing period					
	Place "(X)" after each asset exempt from prior disclosure	(f) Amount Code ! (A-H)	(2) Type (e.g., div., rest, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, tedemption)	(1) Data nom/dd/yy	(3) Value Code 2 (J-P)	(4) Gaio Code I (A-H)	(5) Identity of buyer/seller (if private transaction)
35.	Kraft Foods Inc. Class A	T	None	K	Т				\Box	
36.	Electronics NS Spon ADR	1	None	1	т					
37.	Linear Technology Corp.	A	Dividend	K	T					
38.	Medeo Health Solutions Inc.		None	ĸ	Т					
39.	Merck & Co. Inc.	В	Dividend	K	Т					
40.	Meridian Bioscience Inc.	A	Dividend	J	Т					
41.	Microsoft Corp.	В	Dividend	L	Т					
42,	Moodys Corporation	^	Dividend	J	Т					
43.	Norfolk Southern Corp.	В	Dividend	М	Т					
44.	PepsiCo Inc.	Α	Dividend	J	Т					
45.	Philip Morris Intl. Inc.		None	3	Ţ					
46.	Piedmont Natural Cas		None	к	т					
47.	Phum Creek Timber Co.	٨	Distributio	in J	Т					
48.	Praxair Inc.		None	K	Т					
49.	Proctor & Gamble Co.	A	Dividend	К	7					
50.	Royal Dutch Shell PLC ADR	^	Dividend	4	Т					
51.	Sysco Corp.	Α	Dividence	J	Т					
2.4	scorne Gaia Codes: A > \$1,000 or hose in: Cohamos B1 and D4) F - \$5,000 - \$100,00 sine: Codes: J - \$1,500 or hose re Cohamos C1 and D3) Y - \$224,001 - \$500,		8 = \$1,001 - \$7 G = \$100,001 - \$ K - \$15,001 - 5 O = \$500,001 -	\$1,000,000 \$0,000	H1 =51,0 L =550,0	11 - 15,000 000,001 - 55,000,000 01 - 5100,000 00,001 - 53,000,000	D -35,0 FEX =Mc M =810	01 - \$15,000 re than \$5,0 0.02 - \$00,0 0.00 - \$2	90,000 ,903	E =\$13,001 - \$\$0,000

	NANCIAL DISCLOSURE I ge 8 of 11	REPOR		me of Person untz, Willi	**************************************	in the second	*******			Date of Report	
11.	. INVESTMENTS and TRU NONE (No reportable income, o				Preludes that	e of spouse and d	epsndent chi	ldren; sec	рр. 34-60 с	ffiling instructions.)	
	A. Description of Assets (including trust assets)		B. me during ring period	Gross va	lye at end ing period	O. Transactions during reporting period					
	Place "(X)" after each asset exemps from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rest, or fat.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(!) Type (a.g., buy, sell, redemption)	(2) Dwc mm/dd/yy	(3) Value Code 2 (J-P)	(4) Guin Code I (A-H)	(5) Identity of buyer/seiler (if private transaction)	
2.	3M Company	^	Dividend	I	т						
3.	Time Warner Inc.	D	Dividend	J	т						
4.	Time Warner Cable Inc.	^	Dividend	ŗ	Т						
5.	Total S.A. Spon ADR	٨	Dividend	1	Т						
S .	US Bancorp Del.	A	Dividend	J	Т						
).	Union Pacific Corp.		None	ĸ	Т						
3.	Verizon Communications	В	Dividend	K	Т						
9,	Vodafone Group Pt.C Spons		None	K	Т						
٥.	Wai-Mart Stores Inc.	^	Dividend	К	T						
١.	Weyerhauser Co.		None	K	τ						
2.	iShares MSCI Australia Index Fund	Λ	Dividend	K	Т						
3.	Vanguard MSCI Emerging Mkts	^	Dividend	ĸ	Т						
4.	Alliance Capital Growth		None	J	Т						
5.	Sun American Capital Appreciation		None	к	τ						
6.	S.A. I year fixed no MVA		None	J	Т						
7.	S.A. Inti Grw & Income		None	к	T						
8.	MFS Total Return		None	к	Ţ						
(S: 2. V; (S:	teorite Gisti Cades: A=\$1,000 or feas set Columns B1 and D4) P=\$50,000 - \$100,000 set Chocks J=\$15,000 or feas J=\$15,000 or feas J=\$15,000 or feas J=\$15,000 or feas J=\$150,000 or feas J=\$150,000 or feas J=\$150,000 or feas	0 000,008	D =51,001 - 51,5 G =5100,001 - 51 K =515,001 - 55 O =5500,001 - 51 R =Cau (Rm) Es	000,000, 000,000, 000,000	181 =51,00 L =550,00 P1 =51,00	1 - 35,000 10,001 - \$5,000,000 11 - \$100,000 10,001 - \$5,090,000 18ac \$50,000,000	H7 =Mc M =\$10	00,213 - 10 55,000 and an 00,000 - 52 50,000 - 53	000,000 000,0	E=\$15,001 - \$10,000	

Page 9 of 11	ISCLOSURE I	REPOR	1	teme of Person Kumez, Willi			1000	41.5%		03/10/2011
TI. INVESTMI	ENTS and TRL	ISTS -	income, value	, mansactions (Includes tha	ne of spouse and d	lependens chi	idren; see	рр. 34-60 а	f filing instructions.)
_	portable income, a									
		-y -	B	-T				~~. ~ n		
Description		lnox	me during		duc at end				reporting p	eriod
(including t			ting period		ing period	1				-
		(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
Place "(X)" at	her carch auset	Amount	Type (cg.		Value	Турс (с.с.,	Date	Value	Gain	Identity of
exempt from p	rior disclosure	Code 1	div., rest,	Code 2	Mothod	buy, soil,	mm/dd/yy		Code 1	buyen/seller
		(A-H)	ortat.)	(J-P)	Code J (Q-W)	redemption)		(J-P)	(A·H)	(if private transcripti)
			L	J	12	L		I	lL	
9. Citibank Deposit P	rogram		None	J	T					
0. Ishares MSCI Emg	Mkte Index Fund		None	,	т					
l. Invesco Constellati	on Fund Class A		None	J	T					
2. DWS Communicat	ions Fund Class A		None	1	T					
3. Legg Mason CB L	arge Cap Growth		None	J	T					
4. Legg Mason Globs	l Currents		None	К	Т					
5. Punam Voyager F	und Inc. Cl. A		None	к	Т					
5. Washington Mutua	l Investors Fund Ct. A		None	к	Т					
7. Surips-Tint-US Tro	asury Int 0%		None	L	Т					
R. CH Energy Group	Inc.	٨	Dividend	ı	Т					
9. Pumam Income Fu	nd A	A	Dividend	1	T					
D. Whole Life Insurar	ice Policy AXA Equital	ole E	Dividend	N N	7					
). Citibank Checking	Accounts	D	Dividend	М	Т					
2.										
3.										
4.										
5.										
				-						
1. Innum: Gain Codes: (See Culumna D1 and D4) 2. Value Codes (See Columna C1 and D3)	A =51,000 or leas F =510,001 - 5100,000 1=515,000 or leas N =5250,001 - 5500,000)	B =\$1,001 - \$2 G =\$100,001 - K =\$15,001 - \$ O =\$500,001 -	52,000,000 30,000	M / +\$1,0 L =\$50,00 P) =\$1,00	9 - \$5,000 00,001 - \$5,000,000 01 - \$1,000,000 00,001 - \$5,000,000	HZ =M6 012 - M	65 - 575,00 re that 55,0 0,001 - 525 000,001 - 5	000,000	Fi →\$15,001 - \$30,000
Value Method Codes (See Column C7)	P) =\$25,000,001 - \$30.0 Q =Appreiss1 U =Dock Value		R =Cost (Real)	Estant Doly)	P4 +Mon 5 :•Asses: W =Estin		1 ×Cm)	Market		

FINANCIAL DISCLOSURE REPORT Page 10 of 11	Name of Person Reporting Kuntz, William P.	Date of Report 03/10/2011
VIII. ADDITIONAL INFORMATION OR I	YPI ANATIONS	

RMATION OR EXPLANATIONS. (Indicate part of Report)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 11 of 11	Kuntz, William F.	03/10/2011

IX. CERTIFICATION.

I certify that all information given above (Including information pertaining to my spoure and minor or dependent children, if any) is accorate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and bonoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicia) Conference regulations.

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILPULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIBINAL SANCTIONS (S. U.S.C. 499, § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES					
Cash on hand and in banks		102	052	Notes payable to banks-secured					
U.S. Government securities - U.S. Treasury STRIPS		82	334	Notes payable to banks-unsecured					
Listed securities - see schedule	3	503	541	Notes payable to relatives					
Unlisted securities				Notes payable to others					
Accounts and notes receivable:				Accounts and bills due					
Due from relatives and friends				Unpaid income tax					
Due from others				Other unpaid income and interest					
Doubtful				Real estate mortgages payable-see schedule					
Real estate owned - see schedule	3	050	000	Chattel mortgages and other liens payable					
Real estate mortgages receivable				Other debts-itemize:					
Autos and other personal property		60	000						
Cash value-life insurance		436	000						
Other assets itemize;									
Thrift Savings Plan		439	532						
				Total liabilities			0		
				Net Worth	7	673	459		
Total Assets	7	673	459	Total liabilities and net worth	7	673	459		
CONTINGENT LIABILITIES				GENERAL INFORMATION					
As endorser, comaker or guarantor on leases or contracts				Are any assets pledged? (Add schedule)	No				
Legal Claims				Are you defendant in any suits or legal actions?	No				
Provision for Federal Income Tax				Have you ever taken bankruptey?	No				
Other special debt									

554

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Abbott Laboratories	\$47,138
Aflac Inc.	40,024
Air Products & Chemicals Inc.	29,992
Altria Group, Inc.	55,306
American Express Co.	35,640
Anglo American PLC ADR	21,624
Ansheuser-Busch Inbev Spons	15,128
Ansys Inc.	9,856
AOL Inc	626
Apple Inc.	17,660
Automatic Data Processing Inc.	77,000
Avon Products Inc.	72,194
Bank of America Corporation	28,822
Brinker Intl. Inc.	22,339
Bristol Myers Squibb Co.	38,431
CH Energy Group, Inc.	12,714
Chevron Corp.	66,711
Coca-Cola Co	63
Dominion Resources Inc.	24,868
E.I. Du Pont De Nemours & Co	47,736
Electronics NS Spon ADR Emerson Electric Co	196 77,856
Exxon Mobil Corp	72,786
Frontier Communications Corp	1,494
General Electric Co	941
General Mills Inc	176,192
Glaxosmithkline PLC SP ADR	24,942
Hubbell Inc Class B	34,970
Intel Corp	5,238
IBM	70,579
Johnson & Johnson	16,588
Koninklijke Philips	7,226
Kraft Foods Inc Class A	42,124
Linear Technology Corp	46,483
Medco Health Solutions Inc.	21,076
Merck & Co Inc	26,870
Meridian Bioscience Inc	8,628
Microsoft Corp	70,171
Moodys Corporation	5,295
Norfolk Southern Corp	107,607
PepsiCo Inc	5,580
Philip Morris Intl. Inc.	63
Piedmont Natural Gas Plum Creek Timber Co	24,752
Praxair Inc.	6,294
Proctor & Gamble Co	26,832 31,525
1 toda & Gailloic Co	31,525

Royal Dutch Shell PLC ADR	10,837
Sysco Corp	13,200
3M Company	11,620
Time Warner Inc	12,720
Time Warner Cable Inc	5,990
Total S.A. Spons ADR	4,965
US Bancorp Del	7,376
Union Pacific Corp.	18,127
Verizon Communications	27,136
Vodafone Group PLC Spons	17,172
Wal-Mart Stores Inc	22,559
Walt Disney Co	33,723
Weyerhaeusser Co.	29,292
Alliance Capital Growth	13,250
Citibank Bank Deposit Program	1,010
DWS Communications Fund Class A	3,954
Fidelity Growth and Income Retirement Fund	751,379
Invesco Constellation Fund Class A	13,959
iShares MSCI Emg Mkts Index Fund	5,723
iShares MSCI Australia Index Fund	42,245
Legg Mason CB Large Cap Growth	8,125
Legg Mason Global Currents	21,969
Merrill Lynch High Income Fund	300,517
MFS Total Return	29,148
Putnam Income Fund	9,261
Putnam Voyager Fund Inc. Cl. A	22,206
S.A. 1 Year Fixed no MVA	5,329
S.A. Intl. Grw & Income	19,308
Sun American Capital Appreciation	23,992
Vanguard Msci Emerging Mkts	29,099
Washington Mutual Investors Fund Cl. A	44,159
Western Asset NY Muni Money Market Fund Cl A	368,011
Total Listed Securities	\$3,503,541
Real Estate Owned	
Personal residence	\$2,800,000
Second residence	250,000
Total Real Estate Owned	\$3,050,000

AFFIDAVIT

I, Milliam Vancis Kontz II, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1 7 201/ (NAME)

Frenk Anthony Chlofelo Notary Public, State of New York No. 01CH6174970 Qualified in King County Commission Expires 10/01/2011

(NOTARY)

Senator COONS. Thank you, Mr. Kuntz. Judge Cain.

STATEMENT OF HON. TIMOTHY M. CAIN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA

Judge CAIN. Thank you, Senator Coons, for presiding at this hearing today. Thank you, Senator Grassley, and my thanks to Senator Leahy for scheduling these hearings and for the important work of the full Committee. I also want to thank the President for his nomination and also Senator Graham for his kind introduction.

With me today, as he indicated, are my wife of 25 years, Renee, right behind me, and my son, Martin, with the new suit. He is a freshman at Walhalla High School in Walhalla, South Carolina, and he is here with the consent of his principal, Ms. Hughes, and his teachers. And so I thank them for their kindness.

Briefly, I would just like to acknowledge some folks at home in South Carolina who are probably watching today: my parents, Harris and Helen Cain, who could not be here for medical reasons and health reasons; and my sister, Sandra Mullican, who is actually taking my father for a doctor's appointment today; and my sister, Pamela Carpenter; my wife's parents, Louis and Betty Patterson; and all of my brothers and sisters and colleagues in the South Carolina judiciary, for all the hard work that they do. Thank you.

[The biographical information of Judge Cain follows:]

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

Timothy Martin Cain

2. Position: State the position for which you have been nominated,

United States District Judge for the District of South Carolina

3. <u>Address</u>: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Oconee County Courthouse P.O. Box 678 205 West Main Street Walhalla, South Carolina 29691

4. Birthplace: State year and place of birth.

1961; Seneca, South Carolina

 Education: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1983 - 1986, University of South Carolina School of Law; J.D., 1986

1981 - 1983, University of South Carolina; B.S., 1983

1979 - 1980, Anderson College; no degree received

6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2000 - present South Carolina Judicial Department 1015 Sumter Street Columbia, South Carolina 29201 Family Court Judge

1993 – 2000 Timothy M. Cain, P.A. 339 ByPass 123 P.O. Box 698 Seneca, South Carolina 29679

Owner (professional association established for purpose of representing my interest in the LLPs with which I practiced during this period; the association ceased activity in 2000 and was formally dissolved in 2003)

1992 – 2000 Oconee County 415 South Pine Street Walhalla, South Carolina 29691 County Attorney (served as appointed County Attorney while maintaining my private law practice)

1998 – 2000 Fedder, Cain and Norton, L.L.P. 339 ByPass 123 P.O. Box 698 Seneca, South Carolina 29679 Partner

1996 – 1998 Ballenger, Fedder, Cain and Norton, L.L.P. 339 ByPass 123 P.O. Box 698 Seneca, South Carolina 29679 Partner

1993 – 1996 Fedder & Cain 339 ByPass 123 P.O. Box 698 Seneca, South Carolina 29679 Partner 1991 – 1993 Brandt, Fedder, Graham & Cain 339 ByPass 123 P.O. Box 698 Seneca, South Carolina 29679 Partner

1990 – 1991 Brandt & Fedder 339 ByPass 123 P.O. Box 698 Seneca, South Carolina 29679 Associate

1988 – 1989 Solicitor's Office, Tenth Judicial Circuit Oconee County Courthouse 211 West Main Street Walhalla, South Carolina 29691 Assistant Solicitor

1986 – 1988 Miley & Macaulay (firm became known as Miley, Macaulay & Cain during this time) P.O. Drawer 428 Walhalla, South Carolina 29691 Associate

Oconee Defender Corporation
N. Gruber Sires, Jr., Public Defender
P.O. Box 1277
Seneca, South Carolina 29679
Assistant Public Defender

1985 – 1986 Fifth Circuit Solicitor 1710 Main Street Columbia, South Carolina 29201 Law Clerk

1985 Kligman & Fleming 1408 Bull Street Columbia, South Carolina 29201 Law Clerk 1983 – 1985 Office of Resident Student Development University of South Carolina 1215 Blossom Street Columbia, South Carolina 29208 Residence Hall Director

1984 – 1985 University of South Carolina 1215 Blossom Street Columbia, South Carolina 29208 Senior Desk Assistant, Towers Area Office

Summer 1984 South Carolina Employment Security Commission 1550 Gadsen Street Columbia, South Carolina 29201 Summer Clerk

Summer 1983 Beacon Manufacturing Company 110 Parkview Street Westminster, South Carolina 29693 Textile Worker

Other Affiliations (uncompensated):

1995 – 2000 (approximate) Oconee Defender Corporation 805 West Main Street Walhalla, South Carolina 29691 Board Member

1999 South Carolina Association of County Attorneys No physical address Secretary

1996 Oconee County Bar Association P.O. Box 846 Walhalla, South Carolina 29691 President 1990 – 1994 Carolina-Georgia Blood Center 515 Grove Road Greenville, South Carolina 29605 Board of Trustees

1989 – 1992 United Way of Oconee County 409 East North 1st Street Seneca, South Carolina 29678 Board of Directors

Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

I did not serve in the armed forces. I registered with the Selective Service.

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Recognition and award for service as County Attorney for Oconee County, 2000 Award for Outstanding Community Service, Board of Trustees, Carolina-Georgia Blood Center, 1994

Honorary Memhership, Oconee Chapter, Fraternal Order of Police, 1993

Doyle Memorial Scholarship, 1979 – 1986

Moot Court, University of South Carolina School of Law, 1985

Citation for Academic Excellence in Scholarly Writing, given by the Faculty, College of Criminal Justice, University of South Carolina, 1984

Alpha Phi Sigma, National Criminal Justice Honor Society, 1981 – 1983 South Carolina Criminal Justice Association, 1981 – 1983

Dean's List, 1980 - 1982

9. <u>Bar Associations</u>: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Anderson County Bar Association, 2000 - present

Family Court Advisory Committee to the Chief Justice of the South Carolina Supreme Court, 2009 – present

National Council of Juvenile and Family Court Judges, 2000 - present

Oconee County Bar Association, 1986 - present

President, 1996

Family Court Bench-Bar Liaison Committee, 1998 - 2000

Committee to study preliminary hearing procedures in criminal cases in Oconee County, 1991

Oconee County Magistrate Selection Advisory Committee, 1993

Oconee Defender Corporation

Board Member, approx. 1995 - 2000

South Carolina Association of County Attorneys, 1997 - 2000

Secretary, 1999

South Carolina Bar Association, 1986 - present.

South Carolina Conference of Family Court Judges, 2000 - present

Member, Brown-Buchan-Jacobs Achievement Award Committee, 2008 – present South Carolina Families for Kids Bench-Bar II Conference, 2002

10. Bar and Court Admission:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

South Carolina, 1986

There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court for the District of South Carolina, 1993 South Carolina Supreme Court, 1986 South Carolina State Courts, 1986

There have been no lapses in membership.

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Carolina-Georgia Blood Center
Board of Trustees, 1990 – 1994
Chickasaw Point Property Owners' Association, 1993 – present
Falcon's Lair Community Service Association, 2004 – present

Local Elementary School

Parent-Teacher Student Team, 2001 - 2007

School Improvement Council, 2005 - 2007

Local Middle School

Parent-Teacher Organization, 2007 - 2010

Oconee Assembly, approximately 1999 - 2009

Phi Alpha Delta Law Fraternity, International, 1984 - 1986

Saint Luke United Methodist Church, Walhalla, SC

Administrative Council, 1994 - 1995; 1997 - 1998; 2011

Chair, Pastor-Parish Relations Committee, 2002 - 2004

Member, Finance Committee, Administrative Council, 2002 – 2004

Member, Community Outreach Committee, 2006 - 2007; 2011 (Chair)

SC First Steps To School Readiness

Oconee County First Steps Partnership Selection Forum, 2000

United Way of Oconee County

Budget Allocations Committee, 1988 - 1989

Board of Directors, 1989 - 1992

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

From 1984 to 1986, I was a member of the Phi Alpha Delta Fraternity. I understand that the Fraternity discriminated on the basis of race until approximately 1950, and on the basis of gender until 1972. It no longer discriminated on these bases when I became a member.

To the best of my knowledge, none of the other organizations listed in question 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

None that I have been able to recall or identify.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

In 2010, at the request of the general counsel for the South Carolina Guardian ad Litem Program, the South Carolina Family Court Advisory Committee to the Chief Justice of the South Carolina Supreme Court endorsed language I authored for inclusion in court orders for substitution of lay guardians or attorneys in child abuse and neglect actions. As a result, this language is now included in such orders issued statewide in South Carolina. A copy of the March 29, 2010 request memo with my language is supplied.

In 2002, I participated in meetings and group discussions with other judges, agency representatives and attorneys as a part of the S.C. Families for Kids Bench-Bar II Committee. These meetings were facilitated by the Children's Law Office, University of South Carolina. The purpose of the committee was to review the current status of statutes and practices, looking for unintended consequences, and possibly recommend new reforms to improve the administration of justice to abused and neglected children and their families. A copy of the May 2002 Interim Recommendations issued by the Committee is supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

November 5, 2009: I testified before the South Carolina Judicial Merit Selection Commission about re-confirmation by the state legislature as a Family Court judge. Additionally, I also submitted a questionnaire to the Commission about my qualifications to be a judge. A copy of my testimony and questionnaire are supplied.

September 22, 2003: I submitted a questionnaire to the Commission about my qualifications to be a judge. I was not required to appear before the Commission in person because no other individuals submitted applications for my seat. A copy of my questionnaire is supplied.

April 4, 2000: I appeared before the Oconee County Council to discuss space problems in the local courthouse. I have no notes, transcript or recording. Press coverage and Council meeting minutes supplied.

November 9, 1999: I testified before the South Carolina Judicial Merit Selection Commission about confirmation by the state legislature as a Family Court judge.

Additionally, I also submitted a questionnaire to the Commission about my qualifications to be a judge. A copy of my testimony and questionnaire are supplied.

During the time I represented the County of Oconee and various municipal governments and local government entities, I was required to give formal and informal legal advice and opinions concerning various matters which often required interpretation of statutory and case law. Legal advice was, at times, provided in open session and at other times, in executive session when warranted.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

During my time as a practicing attorney, I would, from time to time, be asked to speak to various school, civic and church groups concerning topics such as how to pursue a career in the law, the practice of law or estate planning. Since becoming a judge, I have participated in various Continuing Legal Education Seminars, panel discussions and programs, both at a local level and statewide. The items listed below represent speeches or talks I have identified through searches of my files, internet databases, discussions with others and my memory. I have attempted as best I can to list all such items. However, there may be other speeches, talks or presentations I have been unable to locate or remember.

March 19, 2010: Presenter and panelist, Oconee County Bar Continuing Legal Education Seminar. I introduced guest speaker Lesley Coggiola and also participated in a roundtable discussion entitled, "A View from the Bench," about best practices in court. I have no notes, transcript or recording. The address of the bar association is P.O. Box 846, Walhalla, South Carolina 29691.

February 16, 2010: I administered the oath of office to a group of volunteers who had completed training through the South Carolina Volunteer Guardian ad Litem Program. I made some informal remarks prior to administration of the oath but used no outline or notes and have no record or transcript. The address of the program is Division of Children's Services, Office of the Governor, 1205 Pendleton Street, Suite 333, Columbia, South Carolina 29201.

August 26, 2009: I swore in a newly elected Oconee County Council member. I have no notes, transcript or recording. The address for the Council is 415 South Pine Street, Walhalla, South Carolina 29691.

July 7, 2009: I swore in two Oconee County officials, the Auditor and Treasurer. I have no notes, transcript or recording. The address for the officials is 415 South Pine Street, Walhalla, South Carolina 29691.

May 1, 2009: Panelist, Oconee County Bar Continuing Legal Education Seminar. I have no notes, transcript or recording. The address of the bar association is P.O. Box 846, Walhalla, South Carolina 29691.

January 6, 2009: I swore in the new Oconee County Council members. I have no notes, recording or transcript. The address for the Council is 415 South Pine Street, Walhalla, South Carolina 29691.

December 11, 2008: Speaker, West Oak High School Beta Club Induction ceremony for new members. Speech text supplied.

December 4, 2008: Discussion on the three branches of government and how the judicial system works, Calhoun Academy of the Arts, Anderson, South Carolina. I have no notes, transcript or recording. The address of the academy is 1520 East Calhoun Street, Anderson, South Carolina 29621.

2008: Guest lecturer at Anderson University, Department of Criminal Justice – Juvenile Law. I have no notes, transcript or recording. The address of the university is 316 Boulevard, Anderson, South Carolina 29621.

January 2, 2007: I swore in two new Oconee County Council members. I have no notes, recording or transcript. The address for the Council is 415 South Pine Street, Walhalla, South Carolina 29691.

February 24, 2006: Lecturer, Legal Education Seminar, Oconee County Bar. I spoke on Pre-Trial Matters. Materials supplied.

January 4, 2005: I swore in the Oconee County Council members. 1 have no notes, transcript or recording. The address for the Council is 415 South Pine Street, Walhalla, South Carolina 29691.

December 10, 2004: Speaker, Seminar for Chief Administrative Judges, South Carolina Circuit and Family Courts. My presentation was entitled, "Ex Parte Communications." Materials supplied.

December 5, 2003: Seminar faculty, South Carolina Family Court Bench/Bar Continuing Legal Education Program, SC Bar Association. My topic was "Life in Family Court." A copy of my outline is supplied.

March 2002: Discussion on the three branches of government with emphasis on the judicial branch, Westminster Elementary School. I have no notes, transcript or recording. The address of the school is 206 Hamilton Drive, Westminster, South Carolina 29693.

March 2000: Joint Anderson-Oconee Bar Associations Forum on Practice and Procedure, roundtable discussion, Tri-County Technical College, Pendleton, South Carolina. I have no notes, transcript or recording. The address of the Oconee County Bar Association is P.O. Box 846, Walhalla, South Carolina 29691. The address of the Anderson County Bar Association is c/o Nancy Jo Thomason, P.O. Box 4025, Anderson, South Carolina 29622.

September 2000: Lecturer, continuing legal education seminar at Clemson University. My topic was "A View of Ethics from the Bench." I have no notes, transcript or recording. The address of the university is 109 Daniel Drive, Clemson, South Carolina 29631.

April 14, 2000: Investiture ceremony as Family Court judge. I made brief remarks, but have no notes, transcript or recording. The address of the courthouse is P.O. Box 678, 205 West Main Street, Walhalla, South Carolina 29691.

January 1997: I assisted in the presentation and was one of the moderators of an Ethics Program for the Oconee County Bar entitled, "The Case of the Silent Alarm – A Study in Professionalism." The program was based on a seminar approved by the Georgia State Bar. I have no notes, transcript or recording. The address of the bar association is P.O. Box 846, Walhalla, South Carolina 29691.

From 2006 to 2010, I served as an instructor at the Orientation School for New Family Court Judges. A copy of my most recent outline and materials for these presentations is supplied.

I have also addressed volunteers at training workshops for the South Carolina Volunteer Guardian ad Litem Program periodically since 2001. I have no notes, transcript or recording. The address of the program is Division of Children's Services, Office of the Governor, 1205 Pendleton Street, Suite 333, Columbia, South Carolina 29201.

Additionally, I have occasionally spoken to the Anderson and Oconee County Bar Associations about rules of practice and procedure in Family Court. I have no notes, transcript or recording. The address of the Oconee County Bar Association is P.O. Box 846, Walhalla, South Carolina 29691. The address of the Anderson County Bar Association is c/o Nancy Jo Thomason, P.O. Box 4025, Anderson, South Carolina 29622.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

As Oconee County Attorney and as a judge, I have spoken with the press on several occasions. I have attempted to create a complete list of articles in which I was quoted through searches of news databases, my files and the Internet. There may, however, be other articles I was unable to recall or locate.

Ray Chandler, Graham to Push Federal Judgeship for Oconee Family Court Judge Tim Cain, Anderson Independent-Mail, Aug. 28, 2010. Copy supplied.

Carlos Galarza, *The Catch-22 of Child Support*, The Daily Journal, Aug. 16-17, 2008, at 1A. Copy supplied.

David Williams, Oconee's Stoudemire Retires After 21 Years from Program Providing Guardians for Children, Anderson Independent-Mail, Mar. 4, 2008. Copy supplied.

David Williams, Best 'Wurst' Draws Crowd to Oktoberfest, Anderson Independent-Mail, Oct. 22, 2005, at BI. Copy supplied.

David Williams, Oconee Three-Ribbon Rally Raises Abuse Awareness, Anderson Independent-Mail, Apr. 3, 2004, at B1. Copy supplied.

David Williams, Animal Control Gets New Officer, Anderson Independent-Mail, Dec. 16, 1999. Copy supplied.

David Williams, Negotiations for Newry to Continue, Anderson Independent-Mail Sept. 2, 1999. Copy supplied.

Pat Willis, Graham Keeps Moving Ahead, Augusta Chronicle, Mar. 14, 1999, at A19. Copy supplied.

Terry Cregar, Oconee May Subsidize Seneca for Newry Sewer Service, Greenville News, Jan. 23, 1999, at 1B. Copy supplied.

Terry Cregar, Oconee Sheriff Sued Over Arrest, Greenville News, Jan. 6, 1999, at 2B. Copy supplied.

Brian Suber, Oconee Approves Land Sale to Pickens for Treatment Facility, Anderson Independent-Mail, July 3, 1998. Copy supplied.

In August 2006, I was interviewed by a representative of GQ Magazine but was not quoted in the subsequent article.

Additionally, Duke Energy Corporation operates a nuclear power facility in Oconee County, S.C. Pursuant to federal law and regulations, the company is required to cooperate with local governments in the establishment of emergency

operation procedures to be implemented in case of an event at its facility which would require public notification and action, to include evacuation of affected areas, if necessary. As general counsel for Oconec County, I was designated as a Public Information Officer to assist in the coordination and dissemination of information to the public in the event of an emergency requiring some action. Although I do not recall making and have not located any public statements or announcements made by me in this capacity, there may have been occasions that public announcements or statements were made or interviews given as a part of regular training exercises in which I participated.

13. <u>Judicial Office</u>: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

In 2000, I was elected to serve as a Family Court Judge, Tenth Judicial Circuit, by the South Carolina General Assembly and fulfilled the unexpired term of my predecessor. The General Assembly re-elected me to the Family Court Bench in 2004 and 2010.

The South Carolina Family Court has jurisdiction to address all issues involving domestic or family relationships. This includes cases concerning marriage, divorce, child custody, visitation rights, support, alimony, child abuse and neglect, termination of parental rights, adoption, division of marital property, change of name, protection of vulnerable adults, actions involving the Uniform Child Custody Jurisdiction and Enforcement Act, the enforcement of Orders issued under Title IV-D of the Social Security Act and the Uniform Interstate Family Support Act and related matters. This Court generally has exclusive jurisdiction over minors under the age of seventeen alleged to have violated any state law or municipal ordinance, and the waiver of certain cases to adult criminal court.

The Chief Justice of the South Carolina Supreme Court appointed me to serve as the Chief Administrative Judge for the Family Court, Tenth Judicial Circuit, in 2005, 2008 and 2011.

I have also served, by designation of the Chief Justice, as an Acting Associate Justice for the South Carolina Supreme Court on several occasions.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

The types of hearings in Family Court include motions for temporary relief, contempt hearings and trials. Contested trials may last from fifteen minutes to two weeks. I have presided and conducted trials in seventeen counties throughout the State of South Carolina, and I would estimate that I have presided in approximately 10,000 hearings, including approximately 6,000 trials.

Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%
civil proceedings:	75%
criminal proceedings:	25%

Pursuant to South Carolina law, actions in Family Court are tried before a judge without a jury.

 Provide citations for all opinions you have written, including concurrences and dissents.

In my capacity as a Family Court Judge, I have issued numerous decisions at the trial court level. I have attempted to compile a list of all of my opinions, but due to limitations inherent in the court's storage practices and technological capabilities, I was unable to generate an exhaustive list. The attached lists represent my best efforts to supply citations to as many of my opinions as is possible.

(The attached list does not include rulings made from the bench and incorporated into an order drafted by counsel, or cases in which I prepare an Order Memorandum setting forth rulings on factual and legal issues which is sent to the attorneys with a request that an order be prepared incorporating those rulings. Lists of citations for these additional categories of decisions are available upon request.)

In addition, in my capacity as an Acting Associate Justice for the South Carolina Supreme Court, I have concurred in the following opinions:

Hopper v. Terry Hunt Constr., 383 S.C. 310, 680 S.E.2d 1 (2009).

Law Firm of Paul L. Erickson, P.A. v. Boykin, 383 S.C. 497, 681 S.E.2d 575 (2009).

Eldridge v. South Carolina Dep't of Transp., 384 S.C. 548, 683 S.E.2d 483 (2009).

Hiott v. South Carolina, 381 S.C. 622, 674 S.E.2d 491 (2009).

State v. Sweat and State v. Bryant, 386 S.C. 339, 688 S.E.2d 569 (2010).

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the

case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

I have served as a Family Court Judge and Chief Administrative Judge for the Family Court of the Tenth Judicial Circuit. I have also been designated by the Chief Justice of the South Carolina Supreme Court to preside over certain cases having notoriety filed outside of my home circuit and have served as an Acting Associate Justice on the South Carolina Supreme Court. Due to the volume of cases heard, it would be difficult to designate which of these are most significant. However, following is a list of cases that may provide a view of the type of issues I have addressed as a judge.

(1) Eckstein v. Eckstein, No. 99-DR-42-4914. This case involved a determination of jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act. A finding was needed as to whether the State of South Carolina or the State of Oklahoma had jurisdiction to hear and determine a child custody matter. Upon applying the factors set forth in the statute, I determined that Oklahoma was the home state of the minor child and entered an Order which stayed the custody proceedings in South Carolina upon condition that a custody proceeding be commenced in the State of Oklahoma within sixty days.

Richard W. Vieth, attorney for Plaintiff 360 East Henry Street Spartanburg, SC 29302 (864) 582-2962

Jack W. Lawrence, attorney for Defendant P.O. Box 5722 Spartanburg, SC 29304 (864) 583-5057

- (2) Roddy v. Cleveland, No. 2000-DR-42-2838, Judgment Roll No. 248707. This case involved an action for termination or reduction of alimony. I ruled that the Plaintiff did not prove, by a preponderance of evidence, that a substantial and material change of conditions had occurred since entry of the prior alimony award. My Order was appealed to the South Carolina Court of Appeals. The ruling was affirmed in No. 03-UP-117 (S.C. Ct. App. 2003).
- J. Benjamin Stevens, attorney for Plaintiff 128 Magnolia Street Spartanburg, SC 29306 (864) 598-9172

Jim S. Brooks, attorney for Defendant P.O. Box 6443 Spartanburg, SC 29304 (864) 316-1967

(3) Boatright v Hurt, No. 2002-DR-07-572. This case involved an action for a change of custody of a six-year-old minor child. This was a highly contested matter that involved testimony from numerous experts. The trial lasted for eight days and required numerous procedural and evidentiary rulings. Custody was awarded to the Defendant.

Sally G. Calhoun, counsel for Plaintiff 920 Bay Street, Suite 25 Beaufort, SC 29902 (843) 522-3875

Ken H. Lester, counsel for Defendant 1901 Gadsden Street Columbia, SC 29201 (803) 252-4700

McLaurin S. Saunders, counsel for Defendant 308 Harden Street Columbia, SC 29205-3148 (803) 779-0288

Joab M. Dowling, Jr., Guardian ad Litem (deceased)

(4) Peeler v. Peeler, No. 2005-DR-04-2714. This action involved the contested issues of divorce, equitable distribution of property and debt, attorney fees and costs and alimony. It was initially filed in the Eleventh Judicial Circuit, Lexington County, South Carolina. The Plaintiff was the former Lieutenant Governor of the State of South Carolina and candidate for governor. As a result, the case received statewide attention from the press and public.

Although not assigned to preside in the Eleventh Judicial Circuit at the time the case was filed and pending, the action was assigned to me by Order of Chief Justice of the Supreme Court of South Carolina. The order vested me with exclusive jurisdiction to hear and dispose of the case, including all pre-trial motions and other matters pertaining thereto, regardless of where I might be assigned to hold court. Venue was transferred to Anderson County, and I proceeded to schedule a pre-trial status conference so as to address the pre-trial and procedural issues, implement a Scheduling Order and place the case in a posture for trial. Numerous motion hearings were held during the course of this litigation. Evidence included testimony from numerous witnesses, including experts in various fields. After two days of trial, the parties resumed settlement negotiations which resulted in an agreement

which was incorporated into a Final Decree. This file has been sealed by court order pursuant to Rule 41.1, SC Rules of Civil Procedure, and is not available for copying.

Timothy E. Madden, Attorney for Plaintiff Poinsett Plaza, 9th Floor 104 South Main Street Greenville, SC 29601 (864) 250-2279

J. Michael Taylor, Attorney for Plaintiff 2301 Devine Street Columbia, SC 29205 (803) 376-2001

Jan L. Warner, Attorney for Defendant (deceased) P.O. Box 2628 Columbia, SC 29202

James T. McLaren, Attorney for Defendant 1508 Laurel Street Columbia, SC 29201 (803) 799-3074

J. Franklin McClain, Attorney for Defendant 401 South Main Street Anderson, SC 29624 (864) 231-1137

Danyese Hobbs, Guardian ad Litem 2640 Gervais Street, Suite C Columbia, SC 29204 (803) 771-2181

(5) Gulledge v. Gulledge, No. 2007-DR-04-814. This action involved the issues of divorce, child custody and visitation, equitable distribution of real and personal property, equitable distribution of debt, attorney fees and costs, Guardian ad Litem fees and civil contempt. The parties were the owners of a sizable marital estate which included retirement assets with the South Carolina Retirement System and South Carolina General Assembly Retirement System. The Plaintiff was a former member of the South Carolina Legislature and, at the time of trial, a current employee of the South Carolina Budget and Control Board. The action was initially filed in the Eleventh Judicial Circuit, Lexington County, South Carolina, in August, 2004. This was a hotly contested case which attracted some degree of public and press attention due to the allegations in the pleadings and the persons involved.

The Defendant filed a Motion to have the action assigned to a non-resident or retired judge outside of the Eleventh Judicial Circuit or, in the alternative, for a change of venue, which alleged that a fair trial could not be obtained due to alleged "political influence" of the Plaintiff. By Order of the Chief Justice of the South Carolina Supreme Court, dated March 23, 2007, the action was assigned to me and venue was transferred to Anderson County. Following a pre-trial status conference, several pre-trial hearings and motion hearings were held. The eight-day trial of the action took place in January and February 2008. Expert testimony was presented in the areas of psychology, finance and valuation of assets. Several post-trial motions were filed in this case which resulted in the issuance of several Orders. A copy of my Order issued as a result of the trial has been provided.

Jan L. Warner, attorney for Plaintiff (deceased) P.O. Box 2628 Columbia, SC 29202

James T. McLaren, attorney for Plaintiff 1508 Laurel Street Columbia, SC 29201 (803) 799-3074

John O. McDougall, attorney for Defendant P.O. Box 90860 Columbia, SC 29290 (803) 776-3130

Peter G. Currence, attorney for Defendant P.O. Box 90860 Columbia, SC 29290 (803) 776-3130

Gwyn DuBose-Schmitt, Guardian *ad Litem* 334 Old Chapin Road Lexington, SC 29072 (803) 957-4994

(6) Thrasher v. Price, No. 2007-DR-04-2759. This was a contested custody action between the grandparents and parents of a three year old child. The claims of the parties required an analysis of constitutional issues surrounding the custody claims of the non-parents, the rights of the biological parents and the interests of the minor child. The Order granted custody of the child to the paternal grandfather and his wife.

Ivan James Toney, counsel for Plaintiffs P.O. Box 10302 Greenville, SC 29603 (864) 298-0071

David J. Brousseau, counsel for Defendants R. Michael Price and Stephanie Price P.O. Box 197 Anderson, SC 29621 (864) 225-0001

W. Norman Epps, III, counsel for Defendant Heather Hooper P.O. Box 2167 Anderson, SC 29622 (864) 224-3536

Mary Jane Goodwin, Guardian *ad Litem* 113 North Main Street Anderson, SC 29621 (864) 375-0909

(7) Waetzig v. Waetzig, No. 2008-DR-04-1822. This case involved the issue of whether or not the trial court should set aside a Qualified Domestic Relations Order entered into by written stipulation and consent upon a motion filed pursuant to Rule 60(b)(1) of the SC Rules of Civil Procedure on the grounds of mistake, inadvertence, surprise, or excusable neglect. Upon applying the provisions of Rule 43(K), SC Rules of Civil Procedure, and established precedent, I determined that the provisions of Rule 60(b)(1) did not apply and denied the Defendant's Motion to alter the previous Order.

Joy Davis, attorney for Plaintiff 412 Marshall Avenue Anderson, SC 29621 (864) 231-8090

Druanne White, attorney for Plaintiff 412 Marshall Avenue Anderson, SC 29621 (864) 231-8090

Sarah G. Drawdy, attorney for Defendant 2315 North Main Street, Suite 117 The Regency Building Anderson, SC 29621 (864) 261-3977 (8) In the Interest of B.C., No. 2008-JU-37-107. The Juvenile-Defendant was charged with offense of Armed Robbery. He was sixteen years of age at the time of the offense. The State moved to have the case transferred from the jurisdiction of the Family Court to the Circuit Court so as to have the Juvenile tried as an adult. A review of the factors set forth in Kent v. United States, 383 U.S. 541 (1966) was required in this case. After the receipt of testimony and a review of the psychological reports and other information presented, a determination was made to deny the State's motion and retain jurisdiction in Family Court.

Blair L. Stoudemire, attorney for Plaintiff Tenth Circuit Solicitor's Office 415 South Pine Street Walhalla, SC 29691 (864) 638-4294

W. Wilson Burr, attorney for Juvenile-Defendant Oconee County Public Defender's Office 415 South Pine Street Walhalla, SC 29691

(9) Law Firm of Paul L. Erickson, P.A. v. Boykin, 681 S.E.2d 575, 383 S.C. 497 (2009). I served as an Acting Associate Justice for the South Carolina Supreme Court in this case. An out of state judgment creditor filed a motion in the South Carolina Circuit Court to enforce a North Carolina default judgment. The judgment debtors filed a motion for relief from the judgment. The South Carolina Court of Appeals affirmed the ruling of the Circuit Court, which granted the debtors relief from the judgment. The Supreme Court reversed, thereby overruling prior precedent, and held that the section of South Carolina's Uniform Foreign Judgments Act, which placed the burden of proving a foreign judgment is entitled to full faith and credit upon the judgment creditor, violated Article IV, Section 1, of the United States Constitution.

Karl H. Smith, attorney for Petitioner 508 South Fourth Street Hartsville, SC 29550 (843)332-4700

Paul L. Erickson, attorney for Petitioner 1998 Hendersonville Road Building 1, Suite 3 Asheville, NC 28803

Carolyn R. Hills, attorney for Respondent 4701 Oleander Drive Myrtle Beach, SC 29577-5762 (843) 626-2600

(10) Butts v. South Carolina Dep't of Soc. Servs., No. 2009-DR-37-209. This case involved an appeal from a determination made by the South Carolina Department of Social Services to enter the name of the Plaintiff in the Central Registry of Abuse and Neglect. After an administrative hearing, the Hearing Officer upheld the determination by the Agency to enter the Plaintiff's name in the Central Registry. Pursuant to the South Carolina Administrative Procedures Act, the Plaintiff appealed the Order of the Administrative Hearing Officer to the Family Court. As the Appellate Court in this instance, I was required to determine if the substantial rights of the Appellant had been prejudiced and if the administrative findings, inferences, conclusions or decisions were (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (f) arbitrary or capricious or clearly unwarranted exercise of discretion. The Plaintiff also asserted that the findings by the Agency and Administrative Hearing Officer constituted cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. After a final hearing, the determinations of the Agency and the Administrative Hearing Officer were upheld.

Bradley A. Norton, attorney for Plaintiff P.O. Box 490 Walhalla, SC 29691 (864) 638-2930

Karen F. Ballenger, attorney for Plaintiff P.O. Box 490 Walhalla, SC 29691 (864) 638-2930

Susan Anderson, attorney for Defendant P.O. Box 1520 Columbia, SC 29202 (803) 898-7368

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - (1) Hartman v. Burdette, et al., No. 2000-DR-37-527. Copy provided.

Ronnie J. Treadwell, co-counsel for Plaintiff 510 East Calhoun Street Anderson, SC 29621 (864) 224-9750 Floy Kenyon Anderson, co-counsel for Plaintiff P.O. Box 1286 Anderson, SC 29622 (864) 224-2596

Raymond E. MacKay, counsel for Defendant 1301 Ella Street Anderson, SC 29621 (864) 225-4495

Charles R. Hughes, Guardian *ad Litem* P.O. Box 2003 Seneca, SC 29679 (864) 888-4807

(2) Davis v. Davis, No. 2000-DR-37-63. Copy provided.

R. Scott Dover, counsel for Plaintiff P.O. Box 462 Pickens, SC 29671 (864) 878-0662

Julian L. Stoudemire, counsel for Defendant P.O. Box 99 Seneca, SC 29679 (864) 882-1480

Karen G. Pruitt, Guardian ad Litem 201 Werner Street Central, SC 29630 (864) 639-1800

3. Anderson v. Tolley, No. 2001-DR-37-146. Copy provided.

Pamela E. Deal, counsel for Plaintiff P.O. Box 1764 Clemson, SC 29633 (864) 654-1699

Julian L. Stoudemire, counsel for Defendant P.O. Box 99 Seneca, SC 29679 (864) 882-1480 (4) Miller v. Miller, No. 2002-DR-37-554. Copy provided.

Julian L. Stoudemire, counsel for Plaintiff P.O. Box 99 Seneca, SC 29679 (864) 882-1480

J. Redmond Coyle, counsel for Defendant (deceased) P.O. Box 898 Pickens, SC 29671 (864) 878-3514

(5) Long v. Long, No. 2002-DR-37-116. Copy provided.

R. Scott Sprouse, counsel for Plaintiff P.O. Box 99 Seneca, SC 29679 (864) 882-1480

W.N. Epps, Jr., counsel for Defendant P.O. Box 2167 Anderson, SC 29622 (864) 224-2111

Susan S. Reese, Guardian ad Litem Seventh Circuit Solicitor's Office 180 Magnolia Street, Third Floor Spartanburg, SC 29306 (864) 596-2575

(6) Wendt v. Wendt, No. 2002-DR-37-664. Copy provided.

N. Gruber Sires, Jr., counsel for Plaintiff P.O. Box 1277 Seneca, SC 29679 (864) 882-1277

Stuart G. Anderson, Jr., counsel for Defendant P.O. Box 1749 Greenville, SC 29602 (864) 233-4566

Amanda H. Craven, counsel for Defendant P.O. Box 3547 Spartanburg, SC 29304 (864) 585-5100 Pamela E. Deal, counsel for Third-Party Defendant Sandra E. Wendt P.O. Box 1764 Clemson, SC 29633 (864) 654-1699

(7) Brunelle v. Brunelle, No. 2003-DR-37-80. Copy provided.

Karen F. Ballenger, counsel for Plaintiff P.O. Box 490 Walhalla, SC 29691 (864) 638-2930

Julian L. Stoudemire, counsel for Defendant P.O. Box 99 Seneca, SC 29679 (864) 882-1480

(8) Dept. of Social Services v. A.M.D. and R.G.D., No. 2003-DR-37-387. Copy provided.

K. Scott Toussaint, counsel for Plaintiff P.O. Box 774 Seneca, SC 29679 (864) 888-1900

Stephanie Corley, counsel for Defendant A.D. P.O. Box 98
Walhalla, SC 29691
(864) 718-0777

Emma W. Morris, counsel for Defendant R.G.D. P.O. Box 795 Seneca, SC 29679 (864) 882-2747

James L. Williams, counsel for Defendant R.G.D. P.O. Box 795 Seneca, SC 29679 (846) 882-2747

Blair L. Stoudemire, Guardian ad Litem Tenth Circuit Solicitor's Office 415 South Pine Street Walhalla, SC 29691 (864) 638-4294 (9) Rowland v. Rowland, No. 2003-DR-04-2601. Copy provided.

W.N. Epps, Jr., counsel for Plaintiff P.O. Box 2167 Anderson, SC 29622 (864) 224-2111

William C. Hood, counsel for Defendant 505 North McDuffie Street Anderson, SC 29621 (864) 375-0530

(10) Parnell v. Parnell, No. 2005-DR-46-775. Copy provided.

Joseph D. Matlock, counsel for Plaintiff P.O. Box 11101 Rock Hill, SC 29731 (803) 985-3989

Thomas F. McDow, counsel for Defendant P.O. Box 891 Rock Hill, SC 29731 (803) 327-4151

e. Provide a list of all cases in which certiorari was requested or granted.

The case of *Price v. Turner*, 387 S.C. 142, 691 S.E.2d 470 (2010) was appealed to and affirmed by the South Carolina Supreme Court. A Petition for Certiorari was filed with the United States Supreme Court, and was granted on November 1, 2010. The caption in the appeal is *Michael D. Turner v. Rebecca L. Rogers, et al.*, Docket No. 10-10.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - (1) Dep't of Social Services v. Wright, No. 2000-DR-37-1198, rev'd, UPO No. 02-UP-665 (S.C. Ct. App. 2002). This was an action filed by the South Carolina Department of Social Services seeking custody of the Defendant's elderly wife, who suffered from numerous chronic illnesses. The trial court ruled that the wife would face a substantial risk of harm if returned to the care of her husband and granted the agency custody. The appellate court, using its authority to find facts in accordance with its own view of the evidence, reversed the decision of the trial

court without prejudice to the right of the Plaintiff to file a new action for custody. Copies of the opinions have been provided.

- (2) Crooks v. Crooks, No. 2000-DR-37-406, rev'd, UPO No. 03-UP-447 (S.C. Ct. App. 2003). This action involved the issues of divorce, equitable distribution of marital property and debt and child custody. The appellate court affirmed the ruling of the trial court on the issues of allocation of credit card debt, set off for mortgage payments, valuation of a vehicle and home, use and possession of a vehicle and child custody. However, the court reversed the ruling of the trial court on the award of certain 401(K) retirement funds and calculation of wife's share of the marital home and remanded these issues for reallocation of the marital estate. Copies of the opinions have been provided.
- (3) Lautner v. Lautner, No. 2000-DR-23-2014, rev'd, UPO No. 04-UP-103 (S.C. Ct. App. 2004). This action involved the issues of divorce, equitable distribution of property and debt. The court of appeals reversed that portion of the order of the trial court which included all passive increases to the husband's retirement account in the marital estate. The case was remanded to determine which passive increases should be allocated to the premarital portion of the retirement account. Copies of the opinions have been provided.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - Each hearing results in a written order. Hearings of limited scope are often addressed by form order. More extensive trials require detailed orders with numerous findings. In our court, written opinions are maintained by the Clerk of Court in each county. In general, those are available to the public; however, certain types of cases in Family Court are sealed.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - Law Firm of Paul Erickson, P.A. v. Boykin, 383 S.C. 497, 681 S.E.2d 575 (2009). As Acting Associate Justice by designation of the Chief Justice, I concurred in this opinion of the South Carolina Supreme Court in a case involving application of the Full Faith and Credit Clause of the United States Constitution.
- Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

- 14. Recusal: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
 - a. whether your recusal was requested by a motion or other suggestion by a litigant
 or a party to the proceeding or by any other person or interested party; or if you
 recused yourself sua sponte;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;
 - c. the procedure you followed in determining whether or not to recuse yourself;
 - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

The South Carolina Judiciary does not utilize an automatic recusal system. Decisions concerning recusal are made on a case-by-case basis taking into consideration the facts and circumstances and applicable rules. Judges utilize the South Carolina Code of Judicial Conduct contained in the South Carolina Appellate Court Rules, the Canons of Judicial Ethics, and opinions issued by the South Carolina Advisory Committee on Standards of Judicial Conduct in making such decisions.

My practice is such that if I become aware of a conflict of interest by reason of a close or personal relationship with a person involved in an action, or determine that the circumstances give rise to an appearance of impropriety or that my impartiality might reasonably be questioned, I recuse myself from the case. I do not maintain a recusal log. However, I have identified the following cases I have recused myself from hearing:

Miller v. Miller, No. 2003-DR-37-572. I recused myself sua sponte because I had represented the brother of one of the parties.

Land v. Land, No. 2005-DR-37-231. I recused myself sua sponte because I had represented one of the parties.

Harden v. Harden, No. 2005-DR-37-737. I recused myself sua sponte because I had used the services of a business operated by one of the parties.

Haney v. Haney, No. 2006-DR-37-450. At a temporary hearing, upon reading the affidavit of one of the parties submitted to the court, I asked counsel to make an

inquiry as to whether the party desired that I recuse myself. When I received a response in the affirmative, I granted the request and recused myself from the case.

Mann v. Mann, No. 2006-DR-37-500. I recused myself sua sponte upon learning that the father-in-law of the courtroom security officer normally assigned to me was a potential witness in the case, and that the officer was a neighbor of one of the parties.

Woodall v. Woodall, No. 2007-DR-37-162. I recused myself sua sponte from the equitable distribution trial in this case upon learning that there was a dispute involving the proposed sale of property to a former client.

Siconofli v. Klein, No. 2007-DR-37-273. I recused myself sua sponte because I had previously represented one of the parties.

Moore v. Moore, No. 2008-DR-37-526. I recused myself sua sponte because I am related to one of the parties.

Skelton v. Carithers, No. 2008-DR-04-2543. I recused myself sua sponte because the Acting Clerk of Court was related to one of the parties and a potential witness in the case. All judges in my circuit recused themselves from this case, which was heard by a judge outside of our circuit.

Tippett v. Tippett, No. 2009-DR-37-352. I recused myself sua sponte due to a church affiliation with the parties.

Cain v. Cain, No. 2010-DR-37-17. I recused myself sua sponte because of a possible familial relationship with one of the parties.

Pearson v. Pearson, No. 2010-DR-37-503. I recused myself sua sponte from the trial of this case because one of the parties is employed with a city recreation department where I formerly coached for several years.

Orr v. Orr, No. 2010-DR-37-655. I recused myself sua sponte because I previously represented the parent of one of the parties.

In the event I become aware of a potential conflict of interest or possible appearance of impropriety, I disclose the same to the parties and counsel on the record. I then remove myself from the courtroom and return after they have had a sufficient opportunity to confer and consider the matter and make decisions as to my continued involvement in the case. Upon returning to the courtroom, I inquire of counsel as to their positions and allow them to make any appropriate motions. If the attorneys indicate that the parties desire that I hear the matter, I confirm this with the parties on the record.

15. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

1992 – 2000: County Attorney for Oconee County, appointed by Norman D. Crain, the County Supervisor, reappointed by his successor Harrison E. Orr.

I have never had an unsuccessful candidacy for elective or appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held an office in a political party or been a member of an election committee.

16. Legal Career: Answer each part separately.

- Describe chronologically your law practice and legal experience after graduation from law school including:
 - whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;
 - I have never served as a clerk for a judge.
 - ii. whether you practiced alone, and if so, the addresses and dates;
 - In 1993, I formed the professional association of Timothy M. Cain, P.A. From 1993 through 1996, I practiced under the firm name of Fedder & Cain, with Mr. Fedder acting as "of counsel" during a portion of this time.
 - iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1985 – 1986 Fifth Circuit Solicitor 1710 Main Street Columbia, SC 29201 Law Clerk

1987 Oconee Defender Corporation N. Gruber Sires, Jr., Public Defender P.O. Box 1277 Seneca, SC 29679 (864) 882-1277 Assistant Public Defender

1986 – 1988 Miley & Macaulay (firm became known as Miley, Macaulay & Cain during this time) P.O. Drawer 428 Walhalla, SC 29691 Associate

1988 – 1990 Solicitor's Office, Tenth Judicial Circuit Oconee County Courthouse 211 West Main Street Walhalla, SC 29691 Assistant Solicitor

1990 – 1991 Brandt & Fedder 339 ByPass 123 P.O. Box 698 Seneca, SC 29679 Associate

1991 – 1993 Brandt, Fedder, Graham & Cain 339 ByPass 123 P.O. Box 698 Seneca, SC 29679 Partner 1993 – 1996 Fedder & Cain 339 ByPass 123 P.O. Box 698 Seneca, SC 29679 Partner

1996 – 1998 Ballenger, Fedder, Cain and Norton, L.L.P. 339 ByPass 123 P.O. Box 698 Seneca, SC 29679 Partner

1992 – 2000 Oconee County 415 South Pine Street Walhalla, South Carolina 29691 County Attorney

1998 – 2000 Fedder, Cain and Norton, L.L.P. 339 ByPass 123 P.O. Box 698 Seneca, SC 29679 Partner

1993 – 2000 Timothy M. Cain, P.A. 339 ByPass 123 P.O. Box 698 Seneca, SC 29679

Owner (professional association established for purpose of representing my interest in the LLPs with which I practiced during this period; the association ceased activity in 2000 and was formally dissolved in 2003)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I recall being designated as an Arbitrator on a three member arbitration panel in two automobile accident cases in approximately the mid-1990s. However, I did not maintain a file on these matters and have been unable, through a search of the public records, to locate the files. My recollection is that the other members of the Arbitration Panel were Larry C. Brandt,

P.O. Box 638, Walhalla, SC 29691 (864) 638-5406, and The Honorable Merl F. Code, P.O. Box 2757, Greenville, SC 29602 (864) 271-1300.

o. Describe:

 the general character of your law practice and indicate by date when its character has changed over the years.

During my first two years of practice, I engaged primarily in civil litigation involving personal injury, workers compensation and social security disability, as well as criminal defense and family law. I also had a general office practice that included assisting clients in such matters as real estate transactions, wills, partnerships and corporations. I became a part time Assistant Public Defender and represented clients in Family Court and Circuit Court charged with felonies and misdemeanors. In January 1988, I accepted a position as a part time prosecutor while maintaining my private practice and became a full time prosecutor in June 1988. I represented the State of South Carolina in prosecuting child abuse and neglect cases in Family Court and Circuit Court and prosecuted criminal cases of various types involving felonies and misdemeanors in Oconee and Anderson Counties, as well as civil forfeiture proceedings.

In 1990, I joined the firm of Brandt and Fedder, which later became Brandt, Fedder, Graham and Cain. My primary areas of practice included litigation in the areas of personal injury, medical malpractice, family law, social security disability and criminal defense. I also maintained a general office practice and assisted in representing several local government and municipal clients. In 1992, when the senior partner in the firm decided to limit his practice, I began to devote more attention to the areas of estate planning, probate law and litigation, and business formations – including corporations, partnerships and limited liability companies – in order to maintain this client base. I also took on most of the workers compensation work of the firm.

In 1992, I was appointed as County Attorney for Oconee County and served in this capacity as a part of my private law practice until my election to the bench. During this period of time, Oconee County experienced economic development and industrial growth which increased demand on local government services and infrastructure. In addition, federal and state agencies focused attention on local government compliance with regulations in the areas of solid waste management, sewer and aeronautics. I represented the county sewer utility system, solid waste department, airport commission, several municipalities and a local water utility. Accordingly, I was required to become more familiar with the areas of environmental, employment, governmental and utility law and

regulation, as well as public finance, including fee-in-lieu of tax arrangements and bond issues.

From 1992 until April 2000, I continued to maintain a general office practice and engaged in civil and criminal litigation as described above but devoted more time to government and municipal law. I have handled both jury and non-jury trials primarily in state court involving personal injury, property damage, medical malpractice, premises liability, contract disputes, boundary line disputes, right-of-ways and easements, mortgage foreclosures and matters in Probate Court involving actions for the appointment of conservators and guardians and disputes concerning the validity of testamentary documents and the administration of estates. I also represented clients before administrative judges and boards in workers compensation, social security disability and zoning matters.

With respect to civil litigation, I primarily represented plaintiffs but also represented some individual and corporate defendants, as well as government defendants. I have represented both the government and landowners in eminent domain proceedings.

 your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

I maintained a general practice, primarily in state court. My clients included individuals, both working people and retirees, as well as small businesses and several lending institutions. I also represented several municipalities, two public utilities and Oconee County, and its various commissions and boards.

As my practice developed over time, I had the opportunity to represent people from all walks of life in a variety of legal matters. I did not specialize in any particular area of law.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

During the period of 1987 to 1990, while working as an Assistant Public Defender and later as an Assistant Solicitor (Prosecutor), my court appearances were frequent.

Beginning in 1990, I began to appear more frequently in the Court of Common Pleas (Circuit Court – Civil) in civil matters, as well as before administrative agencies such as the South Carolina Workers' Compensation Commission, but continued to represent clients in Family Court, the Court of General Sessions,

Magistrate's Court and Municipal Courts. I also represented clients before the Social Security Administration and have appeared before zoning appeals boards.

After being appointed County Attorney, I necessarily devoted more of my time to government, municipal and administrative matters. As a result of the increased emphasis on government and administrative issues, my appearances in court became less frequent.

i. Indicate the percentage of your practice in:

1.	federal courts:	5%
2.	state courts of record:	60%
3.	other courts:	10%
4.	administrative agencies:	25%

ii. Indicate the percentage of your practice in:

1.	civil proce	edings:		60%
2.	criminal pr	oceedii	igs:	40%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As a prosecutor, I handled most of my cases as sole counsel or primary counsel, but also worked on some cases as co-counsel. As an associate, I participated in most trials in Circuit Court as associate counsel, but appeared in Family Court most often as sole counsel. Upon becoming a partner and forming my own firm, I handled most cases as sole counsel or primary counsel. I would estimate that I have participated in approximately fifty trials.

i. What percentage of these trials were:

1.	jury:	40%
2.	non-jury:	60%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe

in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- (1) State v. Altizer, No. 87-GS-37-551, Judgment Roll No. 12,423 (Court of General Sessions, Tenth Judicial Circuit, Oconee County); 1987; The Honorable William H. Ballenger (deceased).

I was associate counsel for the Defendant who had been charged with murder. Representation included interviewing lay and expert witnesses, inspection of the scene where the incident took place, legal research and preparation of proposed jury instructions for the trial judge and representation at trial. The Defendant asserted the defense of self-defense. After a four day jury trial, the Defendant was found not guilty.

Alexander S. Macaulay, co-counsel (Subsequently elected Judge, Circuit Court, Tenth Judicial Circuit) P.O. Drawer 428 Walhalla, SC 29691 (864) 638-4266

George M. Ducworth, opposing counsel c/o Anderson University P.O. Box 1061 Anderson, SC 29621 (864) 231-5738 (former Solicitor, Tenth Judicial Circuit)

Tommy B. Edwards, opposing counsel (subsequently elected Judge, Family Court, Tenth Judicial Circuit) P.O. Box 8002
Anderson, SC 29622
(864) 260-4040

(2) Bowen v. Bowen, No. 88-DR-37-76 (Family Court, Tenth Judicial Circuit, Oconee County); 1988; The Honorable J. Franklin McClain, retired.

I represented the husband at the temporary and final hearings in this divorce action initiated by the wife after nineteen years of marriage. The wife sought a divorce on the ground of physical cruelty. My client counterclaimed on the ground of adultery. The

issues before the Court included the grounds for divorce, property division, division of debts, child custody and support and alimony. The assets deemed marital property included the marital home, securities and retirement funds. Testimony included that of a private investigator hired by the husband. While child custody was settled at trial, all other issues were litigated. At the conclusion of the trial, the Court denied the Wife's prayer for a divorce on the ground of physical cruelty and awarded the husband a divorce on the ground of adultery. My client received a favorable division of marital assets.

Michael J. Smith, opposing counsel P.O. Box 1247 Seneca, SC 29679 (864) 882-4600

(3) Oconee County Dep't of Social Services v. D.R. (Father) and M.L.R (Mother), No. 89-DR-37-317 (The Family Court, Tenth Judicial Circuit, Oconee County); The Honorable Robert H. Cureton, retired.

As Assistant Solicitor, I represented the Oconee County Department of Social Services (DSS) in this abuse and neglect action brought after two children were taken into protective custody by law enforcement officers. The report which resulted in the investigation included allegations that the children, ages 13 and 17, had been subjected to verbal abuse, intimidation and threats by their father, who had threatened to kill himself, the family and law enforcement officials. There was no evidence of physical abuse, and the mother would not corroborate the information given by the children. It was determined to prosecute the case on the basis of mental injury and threat of harm to the children. This was a contested case, and both parents were represented by separate legal counsel. I represented DSS throughout the proceedings, including the temporary hearing and merits hearing. The trial took place over a period of several days and involved testimony from both lay and expert witnesses, as to the effect of the actions of the parents on the mental state of the children. The Family Court made a finding of mental injury and continued threat of harm to the children and awarded custody to DSS. To my knowledge, this was the first abuse and neglect case in Oconee County which went to trial on the basis of an alleged mental injury without allegations or evidence of actual physical abuse.

Robert K. Whitney, opposing counsel P.O. Box 14 Seneca, SC 29679 (864) 882-1414

Michael L. Haddock, opposing counsel (Unable to obtain contact information for Mr. Haddock.)

R. Daniel Day, attorney for the minor children Tenth Judicial Circuit Public Defender Office 415 South Pine Street Walhalla, SC 29691 (864) 638-3132

(4) State v. Adams, Nos. 89-GS-04-2220 and 89-GS-04-1104 (Court of General Sessions, Anderson County); 1989; The Honorable William B. Traxler, Jr. Judge Traxler is now the Chief Judge of the United States Court of Appeals for the Fourth Circuit.

I prosecuted this case for the State of South Carolina. The Defendant was indicted on two charges, Causing Great Bodily Injury By Operating A Vehicle While Under The Influence Of Drugs Or Alcohol (Felony DUI - Great Bodily Injury), and Causing Death by Operating A Vehicle While Under The Influence Of Drugs Or Alcohol (Felony DUI - Death). The indictments alleged that the Defendant was driving a Ford Station Wagon while under the influence of alcohol in Anderson County, South Carolina, when he lost control of and wrecked his vehicle, causing the death of one person and serious bodily injury to another. The Defendant asserted that he was not driving the vehicle at the time of the collision. The case was tried before a jury over a period of two days. The State was required to establish a chain of custody of bodily fluid samples taken by medical personnel and present testimony from the investigating police officer, medical personnel and other witnesses. The Defendant was convicted on both charges and sentenced to a term of imprisonment of five years on one indictment, and ten years on the other. These convictions were affirmed on appeal to the Supreme Court of South Carolina as reflected in Memorandum Opinion 91-MO-55 filed February 11, 1991.

Robert A. Gamble, opposing counsel Anderson County Public Defender's Office 301 Camson Road Anderson, SC 29625 (864) 260-4048

(5) State v. Murphy, No. 89-DR-37-161 (Court of General Sessions, Tenth Judicial Circuit, Oconee County); 1989; the Honorable William H. Ballenger, Circuit Court Judge (deceased).

I prosecuted this case for the State of South Carolina on August 1 and 2, 1989. The Defendant was indicted on the charge of Assault And Battery With Intent To Kill. The State alleged that on December 24, 1988, the Defendant, with malice aforethought, committed the offense of assault and battery with intent to kill upon the victim by shooting him. The Defendant asserted the defense of self defense. The case was tried before a jury over a period of two days and resulted in a verdict of guilty. The Defendant was sentenced to a term of imprisonment of twenty years, suspended upon the service of nine years in addition to five years probation and restitution.

W. Jeffry Weston, opposing counsel Thirteenth Circuit Solicitor's Office 305 East North Street, Suite 400 Greenville, SC 29601 (864) 467-8647

(6) State v. Connally, No. 89-GS-37-1 (Court of General Sessions, Tenth Judicial Circuit, Oconee County); 1989; The Honorable E.C. Burnette, Circuit Court Judge, retired. Prior to his retirement, Judge Burnette was elected as an Associate Justice of the South Carolina Supreme Court.

I represented the State of South Carolina in this criminal prosecution for the offense of Pointing Or Presenting A Firearm. The Defendant had significant criminal history which included violent crimes such as kidnapping and drug offenses and was on probation at the time of the offense. The Tenth Circuit Solicitor concluded that the Defendant, who had been released on bond, represented a threat to public safety and the community. The case was assigned to me for prosecution, and the Defendant was convicted after a jury trial.

George M. Ducworth, co-counsel c/o Anderson University P.O. Box 1061 Anderson, SC 29621 (864) 231-5738 (former Solicitor, Tenth Judicial Circuit)

Bruce Byrholdt, opposing counsel P.O. Box 2506 Anderson, SC 29622 (864) 225-1411

(7) Convers v. Oconee Omni Corporation Corp., et al., No. 90-CP-37-413, Judgment Roll No. 30,409 (Court of Common Pleas, Tenth Judicial Circuit, Oconee County); 1990-1993; The Honorable Tom J. Ervin, Circuit Court Judge (retired).

My firm represented the Plaintiff in this medical malpractice action. The Plaintiff was involved in an automobile accident and was treated by the Defendant Physician at Oconee Memorial Hospital. The allegations included that the attending physician had improperly and prematurely removed a cervical collar and immobilization restraints placed on the Plaintiff at the scene by emergency medical personnel, and that this incident was indicative of a pattern of similar conduct towards patients treated in the emergency room by this physician. The Plaintiff was rendered a quadriplegic as a result of his injuries. This lawsuit involved extensive discovery and depositions over a period of approximately two and one-half years, as well as the preparation and use of expert witnesses, including emergency physicians, neurosurgeons, economists, and life care planners. The Corporate Defendants and Officers were granted summary judgment.

The trial, which lasted two weeks, resulted in a verdict for the Plaintiff against the Defendant Physician in the amount of five million dollars. It is my understanding that at the time, this verdict represented the largest jury award ever rendered in Oconee County. The Defendant filed an appeal. However, a favorable settlement was reached while the case was on appeal.

Larry C. Brandt, co-counsel P.O. Box 738 Walhalla, SC 29691 (864) 638-5406

W. Jerry Fedder, co-counsel 10 Running Deer Court Greer, SC 29650 (864) 848-1201

Lindsey O. Graham, co-counsel (Mr. Graham was subsequently elected to Congress) 290 Russell Senate Office Building Washington, D.C. 20510 (202) 224-5972

Alexander S. Macaulay, opposing counsel (subsequently elected as Circuit Court Judge, Tenth Judicial Circuit) P.O. Drawer 428
Walhalla, SC 29691
(864) 638-4266

William M. Hagood, III, opposing counsel P.O. Box 10045 Greenville, SC 29603 (864) 242-6360

Cary C. Doyle, opposing counsel P.O. Box 2125 Anderson, SC 29622 (864) 224-7111

G. Dewey Oxner, Jr., opposing counsel P.O. Box 2048 Greenville, SC 29602 (864) 240-3208 (8) Standridge. v. Thrift, et al., No. 1992-ES-37-00-120 (Probate Court of Oconee County), 1994: The Honorable Sandra Burgess Orr, Probate Judge.

I represented the Estate of Mae Thrift Standridge. The decedent had insufficient funds to pay substantial medical expenses and debts incurred prior to her death. The Personal Representative engaged me to bring an action for the sale of certain property to satisfy these debts. In addition to assuring compliance with the necessary notice and accounting requirements for administration of the estate, I assisted the Personal Representative in securing professional services to obtain a plat of survey of the subject property, real estate appraisals and for the preparation and filing of fiduciary tax returns. It was necessary to examine the title to the tracts of real estate owned by the decedent at the time of her death and to determine the decedent's heirs at law and the interests of such persons in the estate.

During the course of the litigation, one of the heirs filed a Disclaimer in an attempt to renounce his interest in the estate in favor of his minor children. Examination of the public records of Oconee County suggested that this purported Disclaimer was filed to avoid the attachment of a judgment lien to the interest of this heir. A review of the applicable provisions of state law and the Internal Revenue Code raised concerns as to the timing of the filing of the purported Disclaimer. In order to protect the Estate, I sought a judicial determination of the effect and validity of the purported Disclaimer. Because the Disclaimer would have benefited the subject heir's minor children, I petitioned the court for the appointment of a Guardian ad Litem for these children.

After hearing the matter, the Probate Court determined that the Disclaimer was invalid and ineffective as it was not filed in compliance with state and federal law. The court also entered an order approving the sale of timber as requested by the Personal Representative and application of the proceeds to payment of debts of the Estate. As a part of this process, I also prepared a Memorandum of Agreement For Harvesting And Sale Of Timber which was approved by the court.

John J. McDonough, III, opposing counsel According to information obtained from the South Carolina Bar Association, Mr. McDonough is no longer licensed to practice law in South Carolina pursuant to Order of the Supreme Court of South Carolina dated August 12, 1996.

Timothy C. Merrell, Guardian *ad Litem* 119-B Professional Park Drive Seneca, SC 29678 (864) 882-2466

(9) Oconee County v. Richardson, et al., No. 96-CP-37-324; Judgment Roll No. 34,053 (Court of Common Pleas, Tenth Judicial Circuit, Oconee County); 1996-1998; The Honorable Alexander S. Macaulay, Circuit Court Judge.

I represented Oconee County, South Carolina, in this condemnation action filed pursuant to the South Carolina Eminent Domain Procedure Act. Oconee County, as a political subdivision of the State of South Carolina, was vested by law with the power of eminent domain. The County sought the acquisition of a tract of real estate and easement appurtenant thereto for the expansion of the Clemson-Oconee Airport. The County had obtained a federal grant for the project through the Federal Aviation Administration. Acquisition of the property was required for the project to proceed. As counsel for Oconee County, I was required to examine the title to the subject property to determine the ownership interests therein and include as named parties all persons having a possible claim or interest.

Discovery was required which included filing the appropriate pre-trial motions to compel discovery and for a judicial determination as to the interests of the parties in the subject real property. The Condemnees filed a motion for a non-jury trial which was granted by consent. The matter was tried before the court on August 26, 1998 which resulted in an award of just compensation in the amount offered by the County. Two of the Condemnees filed an appeal to the Supreme Court of South Carolina which was dismissed by Order dated October 13, 1998.

James S. Erwin, III, opposing counsel 806 Powdersville Road, Suite E Easley, SC 29642 (864) 855-4595

(10) Turner, et al. v. Oconee County, et al., No. 1998-CP-37-77; Judgment Roll No. 36,150 (Court of Common Pleas, Tenth Judicial Circuit, Oconee County); 1998-2000; The Honorable Ellis B. Drew, Jr., Master-in-Equity.

I represented the County of Oconee in this action. The Plaintiff sought to have the Court make a judicial determination to require Oconee County to accept and maintain a road located within the Bayshore Estates Subdivision leading to Lake Hartwell. Defendants Sylvester filed counterclaims against the Plaintiff. The issue before the Court affecting my client was whether the subject road was dedicated as a public road or accepted as such by Oconee County. An unfavorable ruling to my client could have affected other situations and exposed the County to additional liability and expense. I moved for and obtained an Order for Summary Judgment as to Defendant, Oconee County. The Order granting Summary Judgment in favor of my client was affirmed by the South Carolina Court of Appeals after I closed my law practice upon election to the Family Court Bench.

R. Scott Sprouse, opposing counsel P.O. Box 99 Seneca, SC 29679 (864) 882-1480

Phillip E. Reeves, opposing counsel P.O. Box 15089 Greenville, SC 29603 (864) 271-9580

Perry H. Gravely, counsel for Defendants Prescott and Sylvester P.O. Box 219 Pickens, SC 29671 (864) 878-1577

Bradley A. Norton, counsel for Bayshore Association, Inc. P.O. Box 490 Walhalla, SC 29691 (864) 683-2930

18. <u>Legal Activities</u>: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As a prosecutor and criminal defense attorney, I have prosecuted and defended many actions involving crimes against persons and property which did not go to trial. I represented clients in three medical malpractice cases filed in state court which resulted in settlements prior to trial. One of these cases involved wrongful death and survival actions. I also handled a medical malpractice action against United States Army under the Federal Tort Claim Act which resulted in a substantial settlement.

I was a principal attorney involved in a premises liability case which left a young child with permanent brain damage filed in state court but removed to federal court. A favorable confidential settlement was reach shortly before trial. My practice in civil court included several cases involving serious personal injury which sometimes included companion claims for workers compensation and social security disability benefits.

My work in family court included the representation of clients of modest means and clients with substantial marital estates. I have handled numerous actions involving the termination of parental rights as well as adoptions.

As counsel for the Oconee County Sewer Commission, holder of a National Pollution Discharge Elimination System Pernit, I represented the agency in enforcement actions against industrial sewer users for violations of local sewer permit discharge limits. I also represented the agency in enforcement actions brought by the South Carolina Department of Health and Environmental Control (SCDHEC) as enforcement entity for the U.S. Environmental Protection Agency and assisted in updating, developing and implementing a more current sewer use ordinance for Oconee County. In addition, I assisted the Sewer Commission in the preparation of filings and submissions with state and federal agencies, including SCDHEC, and the Federal Energy Regulatory Commission involving a variety of matters.

As County Attorney, I worked with the County Planning Commission in the development and adoption of the first Land Use Plan Ordinance in Oconee County, and a Municipal Solid Waste Management Plan as required by state and federal law. As counsel to local government entities in such matters, I was required to draft and review ordinances, consent orders, intergovernmental agreements and provide representation at numerous public hearings and enforcement conferences. I represented the county in the negotiation and preparation of engineering and construction contracts for a multi-million dollar upgrade to the sewer treatment facility and with legal issues pertaining to obtaining financing for the project.

As counsel to the Oconee County Aeronautics Commission, I represented Oconee County in litigation involving the public airport, as well as compliance with regulations and grant requirements issued by the Federal Aviation Administration and S.C. Aeronautics Commission. I also assisted in the development of a land use compatibility ordinance to protect the operation of the public airport.

I also represented the County Election Commission in matters pertaining to public elections and submission of ballot questions to the United States Department of Justice for pre-clearance as required by federal law, and have represented four municipalities in various issues involving litigation, contractual, employment and other matters.

19. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

As I have been a full time state court judge for over 10 years, I am divested from any law firms with which I was formerly associated. I have no deferred income arrangements other than my retirement accounts.

21. Outside Commitments During Court Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any plans or commitments to pursue outside employment.

22. <u>Sources of Income</u>: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Statement.

23. <u>Statement of Net Worth</u>: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am not aware of any potential conflicts of interest.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would refer the Code of Judicial Conduct and Canons of Judicial Ethics to address any potential conflicts of interest. I would recuse myself *sua sponte* in any matter which presented an appearance of impropriety or where my impartiality might reasonably be questioned.

25. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During my time as a practicing attorney, I assisted many disadvantaged clients, including those unable to speak English, on a pro bono basis and at reduced fees. I have also served as Guardian ad Litem for children in abuse and neglect actions without fee. Additionally, I have served as advisor and coach to a local high school mock trial team.

During the first Gulf War, I assisted in preparing Last Wills and Testaments for service members called up for active duty. While in private practice, at the request of the South Carolina Department of Social Services, I agreed to be appointed as Conservator, under supervision of the Probate Court, for a vulnerable adult who was unable to provide for her own care and had no family in a position to assist her.

I have also served in various capacities with several community groups including committees and boards of organizations such as United Way and a regional not for profit blood program providing needed blood supplies to hospitals in South Carolina and Georgia. I also served on the Board of Directors of the Oconee Defender Corporation which, prior to the implementation of the statewide Indigent Defense System, was responsible for providing services to indigent defendants in criminal cases in Oconee County. I have also been actively involved in community outreach programs through my church designed to assist disadvantaged persons and have volunteered countless hours as a coach for the local recreation department.

26. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission in my jurisdiction to recommend candidates for nomination to the federal courts.

I have had several conversations with Senator Lindsey O. Graham concerning potential judicial openings in the United States District Court for the District of South Carolina. In May 2009, Senator Graham suggested that I contact the Offices of Congressman John M. Spratt, Jr. and Congressman James E. Clyburn. I subsequently spoke with and provided information to representatives of both Congressmen. I met with Congressman Spratt in May 2009. In June 2009, I received a joint letter from Congressman Spratt and Congressman Clyburn which indicated that my name had been submitted to the White House Counsel for consideration for appointment as a United States District Judge. I thereafter wrote both Congressmen and thanked them for their consideration and assistance.

I was contacted by a member of Senator Graham's staff on October 18, 2010. Since October 19, 2010, I have been in contact with pre-nomination officials at the U.S. Department of Justice. I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C., on December 2, 2010. The President submitted my nomination to the Senate on February 16, 2011.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No



FINANCIAL DISCLOSURE REPORT NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. opp. §§ 101-111)

. Person Reporting (last name, fine, middle initial)	2. Court or Organization	3. Date of Report
CAIN, TIMOTHY M.	U.S. District Court - District of South Carolina	02/16/20(1
Title (Article III judges indicato unive or senior status; magistuste judges indicate full- or part-time)	Sa. Report Type (check appropriate type) [7] Nomination. Date 02/16/2011	6. Reporting Period
U.S. District Court Judge	Momination Date 02/16/2011 Initial Amended Report Final	02/15/2011
7. Chambers or Office Address Post Office Box 678 205 West Main Street Walhhila, SC 29691	On the basis of the information contained in this Report a modifications pertaining thereto. It is, in my opinion, in a with applicable laws and regulations.	ompliance
	Reviewing Officer	Date
IMPORTANT NOTES: The checking the NONE bax for t	e instructions accompanying this form must be followed. Compl each part where you have no reportable information. Sign on las	ete all paris, et page.
I MACIFICANO		
. PUBLITUNS, (Reporting Individual only: see no. 9-13.		
I. POSITIONS. (Reporting Individual only; see pp. 9-13 NONE (No reportable positions.)	oj fung instructions.)	
-		MIZATION/ENTITY
NONE (No reportable positions.)	NAME OF ORGA	ANIZATION/ENTITY
NONE (No reportable positions.) POSITION	NAME OF ORGA	NIZATIONENTITY
NONE (No reportable pasitions.) POSITION 1.	NAME OF ORGA	
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NONE (No reportable positions.) POSITION 1. 2. 3. 4. 5. MAGREEMENTS. (Reporting individual only, see NONE (No reportable agreements.) DATE	NAME OF ORGE	
NONE (No reportable positions.) POSITION 1. 2. 3. 4. 5. MAGREEMENTS. (Reporting individual only, see NONE (No reportable agreements.) DATE	NAME OF ORGE pp. 16-16 of filing luxtractions.) PARTIES AND TERMS	

FINANCIAL DISCLO Page 2 of 6	Name of Person Report	-		Date of Report 02/16/2011				
III. NON-INVESTMEN A. Filer's Non-Investment In	ncome		r pp. 17-34 of filing instruction	L)				
NONE (No reportable DAIE	non-investment income.)	SOURCE AND	TYPE	(you	INCOME Irs, not spouse's)			
1. 2009	S.C. Judiciał Depar	rement, salary and taxabl	c reimbursements		\$134,207.00			
2. 20}0	S.C. Judicial Depar	rtment, salary and taxabl	e reimbursements		\$233,58B.00			
1. 201)	S.C. Judicial Depar	runent, salary and taxabl	e reimbursements		\$16,360.00			
4.								
NONE (No reportable DATE 1. 2010	non-investment income.j School District of (SOURCE AND	TYPE					
2. 2011	School District of C	Oconec County, salary						
4,								
IV. REIMBURSEMENTS – vanisperiolism, ledging, food, entertainment. (Includes wase to spouse and dependent children; see pp. 15-17 of filing instructions.) NONE (No reportable reimbursements.)								
SOURCE	DATES	LOCATION	ITEMS PAI	D OR PROVIDED				
I. EXEMPT								
2.								
3.								
4,								

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reparting CAIN, TIMOTHY M.	Pate of Report 02/16/2011
V. GIFTS. (Inclined thave to spouse and dependent children; see p	op 28-31 of filing instructions.)	
NONE (No reportable gifts.)		
SOURCE	DESCRIPTION	VALUE
), EXEMPT		
2.		
3.		
4.		
5.		
VI, LIABILITIES. (Includes there of spouse and dependen	u children; see pp. 32-33 of filling instructions.)	
NONE (No reportable liabilities.)		
CREDITOR	DESCRIPTION	VALUE CODE
1.		
2.		
3.		
4,		
5.		

FII	FINANCIAL DISCLOSURE REPORT		т	Name of Person Reporting						Date of Repart		
Page 4 of 6				CAIN, TIMOTRY M.							02/16/2011	
vn	VII. INVESTMENTS and TRUSTS - Income, value, musicions (Includes those of spouse and dependent children; see pp. 14-60 of filing instructions.) NONE (No reportable income, assets, or transactions.)								offiling instructions.			
	A. Description of Assets (including trust assets)		B. me during ting period		Gross va	lue at end ing period	D. Transactions during reporting period			; period		
	Flace "(X)" after each asset exemps trum prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (c. div., rer or int.	8-	(J) Vehie Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Data mun/dd/yy	(3) Value Code 2 (3-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyerheller (if private transaction)	
i.	Community First Bank Account	В	None		1	т						
2.	Oconec Federal Savings and Loan Association Account	A	Intere	st	3	T						
3.	SC State Credit Union Accounts	В	Intere	:51	Ľ.	т						
4.	Allianz Master-Dex 5 Aunnity		Non	t	L	Т						
5.	American Funda Euro Pacific Growth Fund A		None	c	J	T						
6.	Dodge & Cox Stock Fund		Non	c)	T						
7.	Hertford Moncy Market HLS Annunity		None	e	,	7						
8.	Munder Mid Cap Core Growth Y		None		J	T						
9.	South Carolina Stable Value Fund		None	e	J	Т						
10.	T. Rowe Price Mid-Cap Value fund		None		j	T						
H.												
112.												
13.												
14.												
15.												
16.												
17.												
						-		-				

8 -13,881 -17,100 G -1160,001 -11,000,000 F -1160,001 -10,000

1. Income Onio Codes: (See Columns B1 and O4) 2. Value Online A =\$1,000 or less: F =\$50,001 - \$100,000 F =\$15,000 or less: E -313,001 - 3 fd,000

C =51,501 - 35,000 D = 25,001 - 515,000 000 H = 45,001 - 515,000 000

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 5 of 6	CAIN, TIMOTHY M.	02/16/2011

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Report)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 6 of 6	CAIN, TIMOTHY M.	02/16/2011

IX. CERTIFICATION.

l certify that all information given shove (fuclading information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I forther certify that earned income from outside employment and honoraria and the acceptance of gitts which have been reported are in compliance with the provisions of S U.S.C. app. § 501 et. acq., S U.S.C. § 7353, and Judicist Conference regulations.

Signature AACOUN

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIPIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (S U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES			
Cash on hand and in banks	53	205	Notes payable to banks-secured			
U.S. Government securities-Series EE bonds	2	800	Notes payable to banks-unsecured			
Listed securities			Notes payable to relatives			
Unlisted securities			Notes payable to others			
Accounts and notes receivable:			Accounts and bills due			
Due from relatives and friends			Unpaid income tax			
Due from others			Other unpaid income and interest			
Doubtful			Real estate mortgages payable – personal residence		132	182
Real estate owned - see schedule	354	300	Chauci mortgages and other liens payable			
Real estate mortgages receivable			Other debts-itemize:			
Autos and other personal property	80	000				
Cash value-life insurance						
Other assets itemize:						
- Retirement holdings see schedule	353	096				
			Total liabilities		132	182
			Net Worth		711	901
Total Assets	844	083	Total liabilities and net worth		844	083
CONTINGENT LIABILITIES			GENERAL INFORMATION			
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	NO		
On leases or contracts			Are you defendant in any suits or legal actions?	NO		
Legal Claims			Have you ever taken bankruptey?	МО		
Provision for Federal Income Tux						
Other special debi						

610

FINANCIAL STATEMENT

NET WORTH SCHEDULES

\$ 349,300
5,000
\$ 354,300
\$ 73,967
8,474
11,986
828
4,593
3,897
34,727
200,696
13,928
\$ 353,096

AFFIDAVIT

I, TIMOTHY M. CAIN, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

FEBRUARY 15, 2011
(DATE)

Allie Frith
(NOTARY) Por South
Carolina Commission Expires april 8, 2019

Senator COONS. Thank you, Judge Cain. Judge Ross.

STATEMENT OF HON. JOHN A. ROSS, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI

Judge Ross. Thank you, Senator Coons, and I want to thank Senator Grassley and all of the members of the Committee for letting us have this hearing here today. We truly appreciate it. It is truly an honor and privilege to be here.

I want to thank the President for the nomination, and I especially want to thank Senator McCaskill for her kind words in intro-

ducing me and her support throughout this process.

I am pleased to be here today with family and friends, so I would like to introduce my wife, Judy, who is behind me. We are celebrating our 20th anniversary later this year. And my son, Joe, who will be 13 later this month; and my daughter, Emily, who will be 16 later this month. And I also had to get approval from their teachers and principals to allow them to be here for this experience.

I also have my nephew, William Goodman, who came down from New York for this; my niece, Lauren Goodman, who is an attorney here in Washington, D.C.; and my very, very dear friends Dr. David Robson, his wife, Deb, and their daughters Kelly and Anna, who are here. And I would also just like to acknowledge my parents, Bernie and Elizabeth Ross, who are 89 and 86 and could not travel here, but are with my sister watching this on a webcam; and my father-in-law, who is a retired St. Louis city policeman, Fred Lucreth, who I think is also watching it on a webcam.

So thank you very much.

[The biographical information of Judge Ross follows:]

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

John Andrew Ross

2. Position: State the position for which you have been nominated.

United States District Judge for the Eastern District of Missouri

3. Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office:

State of Missouri, 21st Judicial Circuit
St. Louis County Courthouse, Division 15

7900 Carondelet Avenue Clayton, Missouri 63105

Residence:

St. Louis County, Missouri

4. Birthplace: State year and place of birth.

1954; St. Louis, Missouri

5. <u>Education</u>: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1976 - 1979, Emory University School of Law; J.D., 1979

1972 - 1976, Emory University; B.A., 1976

6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2000 – Present
State of Missouri, 21st Judicial Circuit
Division 15
7900 Carondelet Avenue
Clayton, Missouri 63105
Presiding Judge (2009 – present)
Assistant Presiding Judge (2005 – 2009)
Circuit Judge (2000 – present)

2007 - Present Commercial Bank of Westport 2330 Westport Plaza Drive Maryland Heights, Missouri 63146 Advisory Board Member

1991 – 2000
St. Louis County
41 South Central
Clayton, Missouri 63105
County Counselor
(On two occasions during this period – 1996 through 1998, and 1998 through 1999 – I
worked as a consultant with other lawyers on two civil matters. In each instance, I
worked nights and weekends, and took a short leave of absence from my work as County
Counselor.)

1976 – 1998 Georgia Research Associates 6065 Roswell Road, Suite 2222 Atlanta, Georgia 30318 Sole Proprietor

1979 – 1991 St. Louis County Prosecuting Attorney's Office 7900 Carondelet Avenue Clayton, Missouri 63105 Chief Trial Attorney (1988 – 1991) Assistant Chief Trial Attorney (1986 – 1988) Assistant Prosecuting Attorney (1979 – 1986)

1989 St. Charles County Prosecuting Attorney's Office 300 North 2nd Street St. Charles, Missouri 63301 Special Assistant Prosecuting Attorney 1984 Missouri Attorney General's Office Supreme Court Building Post Office Box 899 Jefferson City, Missouri 65102 Special Assistant Attorney General

Summer 1978 Law Office of Joe Becker 8011 Clayton Road St. Louis, Missouri 63117 Legal Intern

Summer 1977 The Alan Company 3960 Lindell Boulevard St. Louis, Missouri 63108 Administrative Assistant

Summer 1976 Emory Tennis Camp 1380 South Oxford Road Atlanta, Georgia 30322 Tennis Instructor

Other Affiliations (uncompensated)

2004 - Present The Buzz Westfall Charitable Foundation 5840 Oakland Avenue St. Louis, Missouri 63110 President of the Board

2004 – 2008 Asthma and Allergy Foundation, St. Louis Chapter 1500 South Big Bend Boulevard St. Louis, Missouri 63117 Board Member

1996 – 2005 St. Louis County Domestic and Family Violence Council 7900 Carondelet Clayton, Missouri 63105 Board Member 1999 – 2004 Metropolitan Employment and Training Center, Inc. 41 South Central Clayton, Missouri 63105 Chairman of the Board

1998 – 2000 St. Louis International Film Festival 55 Maryland Plaza, Suite A St. Louis, Missouri 63108 Board Member

1993 – 2000 Friends of the Weinman Shelter for Battered Women and Children 41 South Central Clayton, Missouri 63105 Board Member and Treasurer

1992 – 2000 St. Louis County Public Facilities Corporation 41 South Central Clayton, Missouri 63105 Secretary and Treasurer of the Board

1994 – 1998
Football at the New Stadium, Inc. (FANS, Inc.)
41 South Central
Clayton, Missouri 63105
President of the Board

Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

I have not served in the military. I registered for the Selective Service upon turning age 18.

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Award of Commendation, Northwoods, Missouri Police Department (1983) Certificate of Appreciation, St. Louis County Grand Jury (1984) Award of Achievement, Bar Association of Metropolitan St. Louis (1991 & 1992) Certificate of Appreciation, Arts and Education Council of Greater St. Louis (1992) Certificate of Appreciation, Missouri Association of Counties (1996) Certificate of Appreciation, St. Louis County Municipal League (1997)

9. <u>Bar Associations</u>: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

International Municipal Lawyers Association
Missouri Bar Association
2009 Annual Meeting Planning Committee
Missouri Municipal Attorneys Association
National District Attorneys Association
St. Louis County Bar Association
St. Louis County Circuit Court:
Budget Committee
Building Committee
Community Relations Committee
Criminal Justice Review Committee
Security Committee

10. Bar and Court Admission:

 a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Missouri, 1979 Georgia, 1979 (presently on inactive status)

There has been no lapse in my membership in the Missouri Bar. On five occasions, I made late payments of my bar dues in the State of Georgia where I was admitted to practice after graduating, but where I never practiced law. Under the Georgia rules, my bar membership technically lapsed and was then reinstated in these periods.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Missouri Supreme Court, 1979 Georgia Supreme Court, 1979 (presently on inactive status)

There has been no lapse in my membership in the Missouri Bar. On five occasions, I made late payments of my bar dues in the State of Georgia where I was admitted to practice after graduating, but where I never practiced law.

Under the Georgia rules, my bar membership technically lapsed and was then reinstated in these periods.

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Asthma and Allergy Foundation, Board Member (2004 – 2008)

The Buzz Westfall Charitable Foundation, President of the Board (2004 – present)

Commercial Bank of Westport, Advisory Board (2007 - present)

FANS, Inc., President of Board (1994 - 1998)

Forest Lake Tennis Club (2006 - 2009)

Friends of the Wienman Shelter for Battered Women and Children, Board Member and Treasurer (1993 – 2000)

Frontenac Racquet Club (1990 - present)

Leadership St. Louis (now known as Focus St. Louis) (1994)

Metropolitan Employment and Training Center, Inc., Chairman of the Board (1999 – 2004)

Parkway Swim Club (2007 - present)

Phi Alpha Delta legal fraternity (1979 – 1985)

St. Louis County Domestic and Family Violence Council, Board Member (1996 – 2005)

St. Louis County Library

Member, "Buzz" Westfall Favorite Author Series Organizing Committee (2004 – 2006)

- St. Louis County Public Facilities Corporation (1992 2000)
- St. Louis International Film Festival, Board Member (1998 2000)
- St. Louis Site Remediation Task Force (1994 1996)
- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations listed in response to 11a above currently discriminates, or to the best of my knowledge, formerly discriminated, on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

None.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

While a member of the St. Louis Site Remediation Task Force, the task force created "Recommendations for Cleanup Priorities for Fiscal Years 1996 and 1997." I did not actively participate in the Task Force, but a copy of the Recommendations is supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.
 - As County Counselor for St. Louis County from 1991 to 2000, I attended weekly County Council meetings and frequently provided legal interpretations and opinions. Those Council meetings were not recorded and there are no tapes, transcripts or records. The County Counselor's Office issues legal opinions at the request of County agencies and departments. A list of the legal opinions I issued as County Counselor is supplied as Attachment 12c along with the opinions.
- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter.

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have searched my files and electronic databases, and I am including all materials that I have found. When I speak publically, I typically do not have a text and normally do not have notes. The list below represents my best efforts to provide an answer that is as complete as possible.

March 2010: Panel member on Continuity of Operation Planning at the Presiding Judges Meeting. I have no notes, transcript, or recording. The address of the organization is Judicial Education Center, 121 Alameda Drive, Jefferson City, Missouri 65110.

October 2009: Judges' Roundtable Program, Bar Association of Metropolitan St. Louis. I have no notes, transcript, or recording. The address of the Association is 720 Olive Street, Suite 2900, St. Louis, Missouri 63101.

May 2009: Panel member on Handling of Employment Cases sponsored by the National Employment Lawyers' Association, St. Louis Chapter. I have no notes, transcript, or recording. The address of the Association is 1090 Vermont Avenue, NW Suite 500, Washington, DC 20005.

January 2008: Speaker at the Swearing-In Ceremony for Law Enforcement Officials of Greater St. Louis. I have no notes, transcript, or recording. I was unable to find an address for this organization.

June 2006: Panel member for program "Views from the Trial Bench," sponsored by Missouri Organization of Defense Lawyers. I have no notes, transcript, or recording. The address for the Organization is 101 East High Street, P.O. Box 1072, Jefferson City, Missouri 65102.

June 2005: Panel member for Criminal Law Program at the Bench and Bar Conference sponsored by the Bar Association of Metropolitan St. Louis. I have no notes, transcript, or recording. The address of the Association is 720 Olive Street, Suite 2900, St. Louis, Missouri 63101.

October 2004: Speaker at the dedication of the Buzz Westfall Sculpture in the Memorial Park of the St. Louis County Government Center. I have no notes, transcript, or recording.

September 2004: Speaker at the dedication ceremony for the Buzz Westfall Memorial Highway. Notes supplied.

March 19, 2004: Speaker at fundraiser entitled, "Buzz's Birthday Bash," for Buzz Westfall memorial and scholarship to SLU High. I have no notes, transcript or recording.

April 30, 1994: Panelist on crime problems at annual convention of Churches United for Community Action. I have no notes, transcript or recording, but press coverage is supplied.

August 3, 1988: Panelist during International Leadership Seminar for high school students, sponsored by the Hugh O'Brian Youth Foundation. I have no notes, transcript or recording, but press coverage is supplied. The address of the Foundation, known as Hugh O'Brian Youth Leadership, is 31255 Cedar Valley Drive, Suite 327, Westlake Village, California 91362.

In addition, the members of our court sometimes hold public en banc meetings on administrative issues such as budget and facilities. As part of my judicial responsibilities, I have taken part in these meetings.

As Assistant Presiding Judge and Presiding Judge from 2005 to the present, I have spoken to community groups and students about the judicial system and the role of the courts. There are no records or notes of those meetings.

Finally, as Chief Trial Attorney in the Prosecuting Attorney's Office from 1988 to 1991, I represented the Office at meetings of police groups and community groups, such as Mothers Against Drunk Drivers, and spoke about law enforcement efforts. I have no notes, transcripts or recordings. The address of Mothers Against Drunk Drivers is 2050 Woodson Road, St. Louis, Missouri 63114.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

While there are many news accounts attributing certain statements to me, some of these are the result of statements I have made in either a courtroom proceeding or public meeting. I have searched my files as well as internet databases to locate as complete a list of interviews as I could, and am providing all that are available to me, but it is possible there are some I was not able to locate.

Anna Vitale, "Ross Re-Elected Presiding Judge," *Missouri Lawyers Media*, Oct. 14, 2010. Copy supplied.

Heather Ratcliffe, "Public Defenders Act to Cut Off Cases; St. Louis County Prosecutor, Chief Judge Get Warning that Overload Has Become Crisis," St. Louis Post-Dispatch, July 29, 2010. Copy supplied.

Angela Riley, "St. Louis County Adds to Judges' Toolbox," *Missouri Lawyers Media*, May 27, 2010. Copy supplied.

Angela Riley, "Missouri Courts Facing Hiring Freeze," Missouri Lawyers Media, Mar. 10, 2010. Copy supplied.

Heather Ratcliffe, "Bond Office Could Fall to Court's Budget Ax," St. Louis Post-Dispatch, Mar. 5, 2010. Copy supplied.

Heather Cole, "Dress Codes: Missouri Courts Face Difficulty Fashioning Guidelines for What Not to Wear," *Missouri Lawyers Media*, June 19, 2009. Copy supplied.

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13. <u>Judicial Office</u>: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed by the Governor as a Circuit Judge for the 21st Judicial Circuit in the State of Missouri and took office in January 2000. I was retained by the voters in 2002 and again in 2008. The Circuit Court is a court of original jurisdiction over all cases, including civil and criminal matters. During my tenure, I was elected Assistant Presiding Judge by my judicial colleagues in the Circuit and served in that office from 2005 to 2009; I was elected as Presiding Judge and have served in that capacity from 2009 to present.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? 326
 - Of these, approximately what percent were:

42% jury trials: bench trials: 58% civil proceedings: 85% criminal proceedings:

b. Provide citations for all opinions you have written, including concurrences and dissents.

15%

All of my opinions are unpublished; therefore, there are no citations to publication.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - 1. Clement v. Wyoming Fin. Servs. Inc., Cause No. 02CC-1866 (2002 -

Plaintiff filed a two-count petition claiming a breach of fiduciary duty and violations of the Missouri Securities Act. The case proceeded to trial and the jury rendered a defendants' verdict. No appeal was filed.

Plaintiff's Counsel:

Steve Koslovsky

2458 Old Dorsett Road, Suite 230

St. Louis, Missouri 63043

(314) 222-4066

Defendants' Counsel:

Mitch Margo

130 South Berniston, Suite 200

Clayton, Missouri 63105

(314) 725-8788

2. State of Missouri v. Kuchar, Cause No. 02CR-1880 (2002 - 2003)

The defendant, a priest, was charged with six counts of statutory sodomy. In May 2003, the case proceeded to trial. The jury could not agree on a verdict and a mistrial was declared. The case was retried in August 2003, resulting in guilty verdicts on three of the six counts. Pursuant to the jury's verdict, the defendant was

sentenced to three consecutive one-year terms of imprisonment. Defendant waived his right to appeal.

State's Counsel:

Rob Livergood

111 South 10th Street, 20th Floor

St. Louis, Missouri 63102

(314) 539-2200

Defendant's Counsel:

Scott Rosenblum 130 South Central Clayton, Missouri 63105

(314) 862-4332

 Affion Youth Hockey v. Rink-Tec Int'l, Cause No. 03CC-4856 (2003 – 2006)

Plaintiff filed a multi-count petition asserting claims for negligence, misrepresentation, product liability, and punitive damages. The case involved the acquisition of a building and ice rink. The plaintiff claimed the ice rink was defective and that certain defendants concealed that fact. The case proceeded to trial and the jury rendered a verdict for the defendants.

Plaintiff's Counsel:

Mike Wilson 10 South Broadway St. Louis, Missouri 63102 (314) 241-9090

Defendants' Counsel:

Charles Merz 1015 Locust Street St. Louis, Missouri 63101 (314) 621-3787

Tom Magee

200 North Broadway, Suite 700 St. Louis, Missouri 63102

(314) 421-5364

 Royal Waterbeds, Inc. v. Vohsen & Sons, Inc., Cause No. 04CC-3713 (2004 – 2006)

Plaintiff sued two construction companies for negligence, claiming water damage and subsequent lost profits. After trial, the jury returned a verdict for \$722,758 against Vohsen & Sons, Inc. and a defendant's verdict for Kinder Construction, Inc.

Plaintiff's Counsel: Kevin Sullivan

3415 Hampton

St. Louis, Missouri 63139

(314) 781-3222

Defendants' Counsel: Bob Wulff

515 Olive Street, Suite 1100 St. Louis, Missouri 63101

(314) 552-4054

Ken Halvachs 500 West Main Street Belleville, Illinois 62223

(618) 277-9000

 Wandersee and Advanced Cleaning Tech., Inc. v. BP Prods. N. Am., Cause No. 03CC-1622 (2003 – 2006)

This case arose from a police investigation initiated by the defendants, who accused the plaintiffs of stealing a car wash system belonging to BP. That investigation led to the filing of criminal charges against the plaintiffs. Following dismissal of the charges, plaintiffs sued the defendants for injurious falsehood, defamation and prima facie tort. Complex statute of limitation issues were raised in summary judgment motions. Those issues were resolved by writ of prohibition from the Missouri Supreme Court, see 163 S.W.3d 922 (Mo. 2005). The case also involved complex evidentiary issues related to categories of damages. After a two-week trial, the jury returned a verdict for plaintiffs against BP in the amount of \$605,350 and a verdict for the other defendant. I overruled defendant BP's motion for judgment notwithstanding the verdict. On appeal, the Court of Appeals reversed, but the Missouri Supreme Court accepted transfer and affirmed the judgment, at 263 S.W.3d 623 (Mo. 2008).

Plaintiff's Counsel: Joe Dulle

7733 Forsyth Boulevard St. Louis, Missouri 63105

(314) 727-7777

Defendants' Counsel: Dawn Johnson

Robert Duckels

10 South Broadway, Suite 200 St. Louis, Missouri 63102

(314) 241-9090

Don O'Keefe 2000 Equitable Building 10 South Broadway St. Louis, Missouri 63102 (314) 421-5545

6. State v. Salter, Cause No. 05CR-823A (2005 - 2006)

The defendant was the president of a corporation charged with failure to maintain workers' compensation insurance, which is a felony. The defendant filed a motion to dismiss the charge, challenging its constitutionality. I overruled the motion and found the statute to be constitutional. The case proceeded to trial and the jury returned a guilty verdict. The conviction and judgment of the court were affirmed by the Missouri Supreme Court, at 250 S.W.3d 705 (Mo. 2008).

State's Counsel:

Ed McSweeney 100 South Central Clayton, Missouri 63105 (314) 615-2600

Defendant's Counsel:

Irl Baris

1221 Locust Street, Suite 1000 St. Louis, Missouri 63103

(314) 421-6644

7. Stover v. BNSF Ry. Co., Cause No. 06CC-1811 (2006 -- 2008)

Plaintiff was an employee of the railroad who claimed conditions in the workplace caused him to have cumulative trauma injuries. Plaintiff brought suit under two federal statutes, the Federal Employers' Liability Act and the Locomotive Inspection Act. Complex evidentiary issues were raised in the over forty motions in limine ruled on by the court. A jury trial commenced and after a week of trial the parties settled the case.

Plaintiff's Counsel:

Roger Denton

100 South 4th Street, Suite 900 St. Louis, Missouri 63102

(314) 621-6115

Defendant's Counsel:

William Brasher

211 North Broadway, Suite 2300

St. Louis, Missouri 63102

(314) 621-7700

8. Smith v. Univ. Hematology Oncology, Inc., Cause No. 07CC-2249 (2007 - 2009)

This case involved a dispute between a doctor and the medical group that previously employed him. The doctor claimed in a six-count petition that he was owed substantial amounts of money pursuant to employment agreements. The case proceeded to trial and the jury returned a verdict and judgment for plaintiff. The case was settled before an appeal was filed.

Plaintiff's Counsel:

Gabriel Gore

7733 Forsyth Boulevard, Suite 1410

St. Louis, Missouri 63105

(314) 889-7377

Defendant's Counsel:

Joe Dulle

7733 Forsyth Boulevard St. Louis, Missouri 63105

(314) 727-7777

 Greene v. S.S.M. St. Charles Clinic Med. Grp., Cause No. 05CC-4180 (2005 – 2009)

Plaintiffs filed this medical negligence case alleging a drug prescribed by the defendants caused drug toxicity leading to decedent's death.

There were a number of complex legal issues in the case. After more than a week of evidence, the jury returned verdicts for the defendants. No appeal was filed.

Plaintiff's Counsel:

Gary Growe Jason Charpontier 7733 Forsyth, Suite 325 St. Louis, Missouri 63105

(314) 725-1912

Defendants' Counsel:

David Ott Tim Gearin 7700 Forsyth

St. Louis, Missouri 63105

(314) 621-5070

Thaddeus Eckenrode Lisa Howe 8000 Maryland, Suite 1300 St. Louis, Missouri 63105 (314) 726-6670

10. State v. Tolen, Cause No. 07SL-CR2791 (2007 - 2008)

The defendant was an attorney who was accused of providing troubled teenage boys with bikes, cars, liquor, and other items in return for sex. There was also an allegation that he attempted to coerce one boy to lie about these occurrences in a child custody case. Seven search warrants were executed during the course of the police investigation, leading to multiple motions to suppress evidence. There were a number of complex legal issues involved in the case. The defendant proceeded to trial on thirty-seven counts of statutory sodomy and one count of attempted witness tempering. After more than two weeks of evidence, the defendant was found guilty of all but one charge and was sentenced to sixty-five years in prison. The convictions were affirmed on appeal, at 304 S.W.3d 229 (Mo. App. E.D. 2009).

State's Counsel:

Kathi Alizadeh 100 South Central Clayton, Missouri 63105 (314) 615-2600

Defendant's Counsel:

Patricia High
Cassandra Williams
500 North Walker Avenue
Suite E-400

Oklahoma City, Oklahoma 73102

(405) 272-4758

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - Hensley v. Ursuline Acad., Cause No. 07CC-3783, aff'd, 310 S.W.3d 712 (Mo. App. E.D. 2010)

Plaintiff's Counsel:

Patricia Wilcox 1015 Locust, Suite 400 St. Louis, Missouri 63101 (314) 588-9500 Defendants' Counsel: T. Christopher Bailey

Bernard Huger

2000 Equitable Building 10 South Building St. Louis, Missouri 63102

(314) 241-9090

Plaintiff's Counsel:

2. Smotherman v. Mo. Dep't of Mental Health, Cause No. 08SL-CC3667

Howard Shalowitz 7108 Northmoor Drive St. Louis, Missouri 63105

(314) 277-9977

Defendant's Counsel: Michael Cherba

Missouri Attorney General's Office

P.O. Box 861

St. Louis, Missouri 63188

(314) 340-7544

 Legatus Emergency Servs., LLC v. Charles L. Crane Agency, Cause No. 05CC-2666

Plaintiff's Counsel: Tim Noelker

Selth Albin
Holly Yaokum
One U.S. Bank Plaza
St. Louis, Missouri 63101

(314) 552-6521

Defendants' Counsel: Dan Farroll

103 West Vandalia Street, Suite 300

P.O. Box 510

Edwardsville, Illinois 62025

(618) 656-0184

 Visnaw v. Marianist Province, Cause No. 06CC-00008, rev'd, 258 S.W.3d 809 (Mo. Banc 2008)

Plaintiff's Counsel: Daniel Craig

1125 Grand Boulevard, Suite 900 Kansas City, Missouri 64106

(816) 221-7772

Defendants' Counsel:

Gerard Noce

800 Market Street, Suite 2300 St. Louis, Missouri 63101

(314) 480-4160

J. Martin Hadican

225 South Meramec, Suite 832T St. Louis, Missouri 63105

(314) 863-0050

5. Vinson v. Daughhetee, Cause No. 07CC-931, aff'd, 294 S.W.3d 135 (Mo. App. E.D. 2009)

Plaintiffs' Counsel:

Steve Hamburg 231 South Bemiston, Suite 1111

Clayton, Missouri 63105

(314) 725-8000

Ed Dowd Robert Epperson

7733 Forsyth, Suite 1410

St. Louis, Missouri 63105 (314) 889-7300

Defendants' Counsel:

David Stoeberl

120 South Central Avenue

Suite 1800

St. Louis, Missouri 63105

(314) 854-8600

John Hessel

500 North Broadway, Suite 2000

St. Louis, Missouri (314) 444-7735

Glenn Etelson

11921 Rockville Pike Rockville, Maryland 20852

(301) 231-0956

 Luberda v. Mo. Dep't of Soc. Servs., Cause Nos. 05CC-5022, 06CC-1247

Plaintiff's Counsel:

George Luberda 225 South Meramec St. Louis, Missouri 63105 (314) 721-2223

Defendants' Counsel:

Sarah Dobecki

Missouri Attorney General's Office

Supreme Court Building 207 West High Street

P.O. Box 899

Jefferson City, Missouri 65102

(573) 751-3321

7. Sinclair v. United Methodist Church, Cause No. 05CC-5352

Plaintiff's Counsel:

Larry Altman

621 North Skinker Boulevard St. Louis, Missouri 63130

(314) 205-9544

Defendant's Counsel:

Stanley Schroeder

222 South Central Avenue, Suite 901

Clayton, Missouri 63105

(314) 863-0092

Walker Servs., Inc. v. Mo. Dep't of Ins., Cause Nos. 07CC-248, 07CC-2000, aff'd, 299 S.W.3d 677 (Mo. App. E.D. 2009)

Plaintiff's Counsel;

Tom Lake

7777 Bonhomme

Clayton, Missouri 63105

(314) 863-0077

Defendant's Counsel:

Mary Erickson

Missouri Attorney General's Office

Supreme Court Building 207 West High Street

P.O. Box 899

Jefferson City, Missouri 65102

(573) 751-3321

9. Barlow v. Boehme, Cause No. 08SL-CC4160

Plaintiffs' Counsel: Mark Levison

10 South Broadway, Suite 1300 St. Louis, Missouri 63102

(314) 613-2539

Defendants' Counsel: Brian McGovern

400 South Woods Mill Road

Suite 250

Chesterfield, Missouri 63017

(314) 392-5200

10. Harris v. City of Pine Lawn, Cause No. 06CC-3096

Plaintiff's Counsel: Venus Harry

Brandi Miller 447 North Euclid St. Louis, Missouri 63108

(314) 367-1059

Defendant's Counsel: Donnell Smith

1545 Woodson Road St. Louis, Missouri 63114

(314) 426-0056

e. Provide a list of all cases in which certiorari was requested or granted.

None, to the best of my knowledge.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Stabler v. Stabler, 2010 WL 4840869 (Mo. App. E.D. 2010). The Missouri Court of Appeals affirmed in part and reversed in part the Court's ruling on two motions to dismiss. This case was filed in the Probate Division of the Court asserting claims against respondents in their capacities as trustees of a trust and as personal representatives of an estate. The Appellate Court affirmed the ruling dismissing one count of the petition for lack of standing but found that there may be facts from which the petitioner could prove standing to proceed on two other counts.

Hansen v. Halliburton, 2010 WL 4340690 (Mo. App. E.D. 2010). The Missouri Court of Appeals reversed and remanded, finding that the defendant met its

burden of proof on a counterclaim and that there was error in the calculation of plaintiff's damages.

Thomas v. Brandt, 2010 WL 3637530 (Mo. App. E.D. 2010). This was a negligence action filed by decedent's family against publicly-employed emergency medical personnel and their employer as a result of their response to a 911 call. I granted summary judgment for defendants, finding they were entitled to official immunity pursuant to the principles established in Richardson v. City of St. Louis, 293 S.W.3d 133 (Mo. App. E.D. 2009). On appeal, summary judgment was reversed and the case remanded on the grounds that defendants were not acting in a true emergency situation and thus were not protected by official immunity. A motion for rehearing or transfer to the Supreme Court was denied.

Spicer v. Spicer Revocable Living Trust, 2010 WL 2378000 (Mo. App. E.D. 2010). I entered a judgment granting the defendant's motion to enforce settlement. The Court of Appeals reversed for lack of jurisdiction, holding that defendant's motion was not an authorized post-trial motion that would have extended the trial court's jurisdiction beyond 30 days following its entry of judgment. Respondent's application for transfer was sustained and the case has been transferred to the Missouri Supreme Court (SC91117, Sept. 21, 2010).

State v. Seeler, 316 S.W.3d 920 (Mo. 2010). Defendant was convicted of first-degree involuntary manslaughter. In a four-to-three decision the Missouri Supreme Court reversed, holding that the prosecution should not have been allowed to amend the indictment during the course of the trial because it was prejudicial to the defendant.

State ex rel. Marianist Province v. Ross, 258 S.W.3d 809 (Mo. 2008). A former student filed suit against the Marianist Province for sexual abuse. The defendant moved for summary judgment alleging that the statute of limitations had run, and the plaintiff argued he did not bring the case earlier because he had not remembered the abuse due to repressed memory. I denied the motion and defendant filed a writ of prohibition. The Missouri Supreme Court granted the writ, finding I erred in overruling the motion for summary judgment. The court found that the statute of limitations began to run when plaintiff turned 21 because the conduct he remembered was sufficient to put a reasonably prudent person on notice of a potentially actionable injury.

McFadden v. State, 256 S.W.3d 103 (Mo. 2008). Petitioner filed for post-conviction relief past the statutorily-required date. I granted the State's motion to dismiss, which was affirmed by the Court of Appeals. The Missouri Supreme Court accepted transfer and reversed, finding an exception to the statutory rule, specifically, abandonment by counsel.

State v. Presberry, 128 S.W.3d 80 (Mo. App. E.D. 2008). The defendant was convicted by a jury of first degree robbery, stealing a credit card, fraudulent use of

a credit device, attempted first degree robbery, and tampering with a motor vehicle. The Court of Appeals, in a divided opinion, found the trial court improperly admitted identification testimony by a police witness. The Court of Appeals further found the evidence insufficient to support certain convictions. The case was reversed and remanded in part and reversed in part. On remand the defendant pleaded guilty to certain charges

Topps v. City of Country Club Hills, 236 S.W.3d 660 (Mo. App. E.D. 2007). I granted defendant's motion for summary judgment and the Court of Appeals reversed, finding that there was a genuine issue of material fact. After remand, additional stipulated facts were submitted to the court and again, I granted the motion for summary judgment. This decision was affirmed by the Court of Appeals, 272 S.W.3d 409 (Mo. App. E.D. 2008).

State v. McFadden, 191 S.W.3d 648 (Mo. 2006). The defendant was convicted of Murder First Degree and the jury recommended the death penalty. The Court followed the jury's recommendation and sentenced the defendant. The Missouri Supreme Court reversed the conviction, finding Batson violations and that the reasons given by prosecutors for their peremptory strikes were pretextual.

State ex rel. B.P. Prods. v. Ross, 163 S.W.3d 922 (Mo. 2005). A car wash servicing company and its president filed a multi-count petition against B.P. Products for injurious falsehood, defamation, and prima facie tort. B.P. Products moved for summary judgment on statute of limitations and I granted the motions in part. B.P. applied for a writ of prohibition and the Missouri Supreme Court granted the writ in part and denied the writ in part, thereby reversing a portion of the order I entered.

State v. Jordan, 181 S.W.3d 588 (Mo. App. E.D. 2005). In this case the defendant was charged with several counts resulting from a police stop and high speed chase. During the course of the incident, the defendant struck an officer with his car and rammed another police car. After a jury trial, the defendant was found guilty of two counts of assaulting a law enforcement officer, armed criminal action, felony resisting arrest, felony driving while intoxicated, and driving while revoked. The Court of Appeals affirmed the judgment in part and reversed the count for felony resisting arrest, finding the evidence was insufficient to support a finding that the defendant knew the officers were attempting to arrest him for a felony.

Jefferson v. Am. Fin. Grp., 163 S.W.3d 485 (Mo. App. E.D. 2005). The plaintiff sued a mortgage company for breach of fiduciary duty. After a bench trial, I found in favor of the plaintiff and awarded damages. The Court of Appeals affirmed the judgment but remanded with instructions to increase the amount of the award

State v. Hopkins, 140 S.W.3d 143 (Mo. App. E.D. 2004). Defendant was convicted of burglary first degree, assault first degree and two counts of armed criminal action. The Court of Appeals reversed and remanded due to Batson violations, and reversed and discharged one count of armed criminal action due to a lack of evidence. The case was retried and the defendant was convicted of burglary first degree, assault first degree and one count of armed criminal action. The convictions were affirmed on appeal, at 187 S.W.3d 921 (Mo. App. E.D. 2006).

State v. Williams, 85 S.W.3d 80 (Mo. App. E.D. 2002). The defendant was found guilty by a jury of felony failure to appear. The Court of Appeals reversed the conviction, finding the evidence was insufficient to support the verdict.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

All of my decisions are issued in judgments that are unpublished. These unpublished judgments are contained in the individual court files in the Circuit Clerk's office. Many of these judgments are relatively routine; some may be by default or consent of the parties or based on undisputed facts. Although some of these judgments contain my own legal conclusions, our statewide computer system has no mechanism to separately identify these from the thousands of judgments I have entered. In my years as a judge, I estimate I have entered over 7,000 judgments.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have not authored significant opinions on federal or state constitutional issues.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. <u>Recusal:</u> If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant
 or a party to the proceeding or by any other person or interested party; or if you
 recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have followed the Missouri Statutes, applicable case law, and the Code of Judicial Conduct when considering recusal. In my years as a trial judge, I have been assigned thousands of cases and have on occasion entered an order of recusal. I have always reviewed my cases to determine if I had a close relationship with a party, and to identify any witnesses or counsel that would affect my impartiality or create an appearance of impropriety. I have attempted to search the Circuit Court's computer system for all cases in which I have entered an order of recusal, but the system does not have that capability. My brother-in-law is a partner in the St. Louis law firm, Capes, Sokol, Goodman and Sarachan. I presently recuse and would recuse, if confirmed, in any case involving any lawyer in his firm. For several years I recused in any case involving St. Louis County Government because of my former position as St. Louis County Counselor. I continue to recuse and would continue to recuse on any case involving St. Louis County Government, if the subject matter of the litigation involves a policy or practice that I helped to formulate.

In searching my records, I located the case of Susan Mello v. St. Louis County Circuit Court, Cause No. 09SL-CC3509, in which the plaintiff filed a motion for recusal for cause. The plaintiff is a lawyer who alleged that two other judges in the Circuit had failed to provide accommodations for her disability by denying requests for continuance. The plaintiff filed a complaint with the Missouri Commission on Human Rights, which was denied. The case was filed, assigned to my division and, shortly thereafter, the motion for recusal was filed. I reviewed the motion consistent with Missouri Statutes and the applicable case law, found the motion to be procedurally and substantively inadequate, and denied the motion. As the case progressed, it became clear that policies of the entire Circuit were at issue. Due to my role as Presiding Judge, I entered an order of recusal on my own motion and the case was assigned to a judge from a different circuit.

15. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

St. Louis County Counselor, appointed by County Executive George "Buzz" Westfall, 1991 to 2000.

I have not been a candidate for elective office, nor have I been an unsuccessful nominee for an appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was an informal advisor to George "Buzz" Westfall in his campaigns for St. Louis County Executive in 1994 and 1998. I held no position with the campaigns and was not compensated.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
 - whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

 the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1979 – 1991 St. Louis County Prosecuting Attorney's Office 7900 Carondelet Clayton, Missouri 63105 Assistant Prosecuting Attorney 1984 Missouri Attorney General's Office Supreme Court Building Post Office Box 899 Jefferson City, Missouri 65102 Special Assistant Attorney General

1989 St. Charles County Prosecuting Attorney's Office 300 North 2nd Street St. Charles, Missouri 63301 Special Assistant Prosecuting Attorney

1991 – 2000 St. Louis County Government 41 South Central Clayton, Missouri 63105 County Counselor

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

 the general character of your law practice and indicate by date when its character has changed over the years.

I began my legal career with the St. Louis County Prosecuting Attorney's Office. From 1979 to 1981, I handled traffic and misdemeanor cases along with preliminary hearings on felony cases. Beginning in 1981, I began handling both misdemeanor and felony cases. By 1983, I was handling exclusively felony cases and was assigned to present all cases to the St. Louis County Grand Jury. In 1986, I was appointed Assistant Chief Trial Attorney, handling more complex and serious felony cases. In addition, I supervised approximately twenty attorneys assigned to the Associate Circuit divisions. In 1988, I was appointed Chief Trial Attorney, supervising the full trial staff of approximately forty-five attorneys and assigned the most serious felony cases. In addition, I had special appointments to investigate and prosecute murder cases in 1984 and 1989. My area of practice during those years was exclusively criminal law.

From 1991 to 2000, I served as County Counselor for St. Louis County. I supervised a law office of over twenty attorneys, along with paralegals and secretaries. The County Counselor's Office is the civil law office for St. Louis County Government representing all county departments and agencies, the County Council, and the County Executive. St. Louis County Government has over three thousand employees in its many departments. I supervised all litigation, which was primarily in state court but included some federal court litigation. The federal court litigation included civil rights litigation involving prisoners in the County Jail and the police department. I attended and advised the County Council at weekly meetings and drafted legislation. While County Counselor, I worked to establish the St. Louis County Municipal Court system with courts in north, south and west St. Louis County, handling forty thousand ordinance cases a year. My practice was primarily civil during this period of time.

In January 2000, I was appointed a Circuit Judge and I have served as a judge since that date.

 your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As a prosecutor, I represented the State of Missouri in criminal prosecutions.

As County Counselor, I represented all of St. Louis County Government's departments, agencies and commissions. I represented the County Executive and the County Council. In addition, in some limited circumstances, I represented county employees.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As a prosecutor from 1979 to 1991, my practice was exclusively litigation. I had daily court appearances for dockets, motion hearings, and trials. As County Counselor from 1991 to 2000, I spent approximately 30% of my time supervising civil litigation. During this period of time, I appeared in court infrequently.

- i. Indicate the percentage of your practice in:
 - federal courts:
 - 2. state courts of record:
- 100%
- 3. other courts:
- 4. administrative agencies:

ii. Indicate the percentage of your practice in:

civil proceedings: 40%
 criminal proceedings: 60%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried approximately 200 cases as sole counsel.

i. What percentage of these trials were:

1. jury: 25% 2. non-jury: 75%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

- 17. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - a. the date of representation;
 - the name of the court and the name of the judge or judges before whom the case was litigated; and
 - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
 - State v. Wise, 879 S.W.2d 494 (Mo. 1994), St. Louis County Circuit
 Court, Hon. Melvyn Weisman. I prosecuted the defendant for the
 murder of a woman who lived in a condominium complex where he
 worked as a maintenance man. The defendant admitted killing the
 victim so that he could steal jewelry to buy drugs. After numerous
 competency hearings, the defendant proceeded to trial, choosing to
 represent himself with standby counsel. Standby counsel took over
 representation of the defendant in the penalty phase. The defendant,

who was on parole for murder at the time of this offense, was convicted of murder first degree, two counts of armed criminal action, stealing, and robbery first degree. He was sentenced to death and that sentence was carried out after he exhausted all appeals.

Standby Counsel:

B. Strand and M. McClain Public Defenders Office

1000 West Nifong, Building 7, Suite

100

Columbia, Missouri 65203

(573) 882-9855

2. State v. Bullock, 826 S.W.2d 83 (Mo. App. W.D. 1992), Boone County Circuit Court, Hon. Frank Conley. I handled the third trial of the defendant involving the death of his wife. He was tried for murder first degree. I was assigned to the case for the third trial on charges of tampering with physical evidence and arson. The trial was held in Boone County on a change of venue, and the defendant was found guilty of the charges. The Court of Appeals reversed the tampering with physical evidence conviction, holding that offense could not occur in the absence of an official proceeding. The sentencing on the arson conviction resulted in a further appellate opinion, at 838 S.W.2d 510 (Mo. App. W.D. 1993).

Opposing Counsel:

Arthur Margulis 11 South Meramec Clayton, Missouri 63105 (314) 721-6677

3. State v. Jones, 705 S.W.2d 19 (Mo. 1986), Franklin County Circuit Court, Hon. Lawrence Davis. I was appointed as Special Assistant Attorney General to investigate and prosecute this murder that occurred in Crawford County, Missouri. The case was transferred to Franklin County on a change of venue due to pre-trial publicity. The defendant was found guilty of murder first degree and sentenced to death. The judgment was affirmed on appeal.

Opposing Counsel:

Don Hager

Public Defender's Office

1000 West Nifong, Building 7, Suite

100

Columbia, Missouri 65203

(573) 882-9855

 State v. Burrow, 793 S.W.2d 509 (Mo. App. E.D. 1990), St. Louis County Circuit Court, Hon. Arthur Litz. I prosecuted the defendant for the murder of his former employer, who fired him for stealing. The defendant chased the victim throughout his paint store, beating him to death. A number of psychiatrists testified at trial, but the jury rejected his psychiatric defense. The defendant was found guilty of murder first degree, robbery first degree, and two counts of armed criminal action. He was sentenced as a prior offender to life without parole. The judgment was affirmed on appeal.

Opposing counsel:

Scott Dixon 103 West Main Belleville, Illinois (618) 233-1103

5. State v. Trice, 747 S.W.2d 243 (Mo. App. W.D. 1988), Boone County Circuit Court, Hon. Frank Conley. The defendant was a bus driver who drove his bus loaded with children while under the influence of drugs and alcohol. He started racing another car at a high rate of speed and crashed the bus on the side of the highway. As a result of the crash, two students where killed and one student seriously injured. The trial occurred in Boone County on a change of venue due to pre-trial publicity. The case attracted significant media attention because there were no seatbelts on the school bus. In this case, however, the crash was so severe the bus split in half and no precautions would have prevented the deaths and injuries. The defendant was convicted of two counts of involuntary manslaughter and one count of assault second degree. The judgment was affirmed on appeal.

Opposing Counsel: Charles Shaw, now deceased

James Knappenberger 222 South Meramec Clayton, Missouri 63105 (314) 721-2274

6. State v. Goldsby, 845 S.W.2d 636 (Mo. App. E.D. 1992), St. Louis County Circuit Court, Hon. William M. Corrigan. I prosecuted the defendant for kidnapping a woman at knife-point from a shopping center outside of Kansas City and driving her to St. Louis where he raped and assaulted her. Two young men passing by assisted the victim in getting away from the defendant. The victim and the young men identified the defendant, who was arrested and then released on bond. After his release, the defendant fled the United States and was later convicted of drug possession in Malaysia. After several years, the defendant was arrested upon attempting to enter the United States. After trial by jury, the defendant was convicted of kidnapping, rape and assault. He was sentenced to life in prison. The judgment was affirmed on appeal.

Opposing Counsel: Brad Kessler

1520 Washington Avenue St. Louis, Missouri 63103

(314) 539-9595

7. State v. Franks, 702 S.W.2d 853 (Mo. App. E.D. 1985), St. Louis County Circuit Court, Hon. James R. Hartenbach. I was assigned to handle this prosecution after remand from a prior trial. The defendant was an insurance agent who sold life insurance policies. After the initial policies were issued, defendant submitted forged change-in-beneficiary forms designating her friends as beneficiaries. Thereafter, the defendant's brother shot the policyholders and, in one case, killed the person. In the defendant's first trial, she was convicted of conspiracy to commit murder. When that conviction was reversed and remanded, I was assigned to the case. I located two new witnesses who could not be found at the time of the first trial, which resulted in an additional charge of murder second degree. At trial, the defendant was acquitted on the charge of conspiracy to commit murder, but convicted of murder second degree. The judgment was affirmed on appeal.

Opposing Counsel: Dan Finney

1735 South Big Bend Boulevard St. Louis, Missouri 63117

(314) 646-0300

8. State v. Bullington, 680 S.W.2d 238 (Mo. App. W.D. 1984), Boone County Circuit Court, Hon. James Ruddy, Special Judge. I prosecuted the defendant for burglary first degree, armed criminal action and two counts of flourishing a deadly weapon. The defendant broke into a house and kidnapped a young girl at gun point after flourishing the gun at the girl's mother and brother. The case went to trial in Boone County on a change of venue due to pre-trial publicity. The defendant was found guilty on all charges and sentenced in the aggregate to 130 years in prison. The judgment was affirmed on appeal.

Opposing Counsel: Mary Fox

Public Defender's Office Mel Carnahan Courthouse 1114 Market Street, Suite 602 St. Louis, Missouri 63101

(314) 340-7625

 State v. Jones, 679 S.W.2d 927 (Mo. App. E.D. 1984), Circuit Court of St. Louis County, Hon. Arthur Litz. I prosecuted the defendant for kidnapping and armed criminal action. The defendant appeared from behind a tree and abducted a female jogger at knife-point. He pulled the woman into his parked car and started driving away. He attempted to tie the victim's hands and place tape over her eyes, but she was able to break away from the defendant's grasp and jump out of the car. Based on circumstantial evidence and the victim's identification, the defendant was convicted at trial. The judgment was affirmed on appeal.

Opposing Counsel:

Nick Zotos

4235 Lindell Boulevard St. Louis, Missouri (314) 534-1797

10. State v. Jones, 693 S.W.2d 166 (Mo. App. E.D. 1985), St. Louis County Circuit Court, Hon. Richard Enright. I prosecuted the same defendant in a separate case for kidnapping, forcible rape, sodomy, and armed criminal action. In this case, the defendant abducted a young girl who was walking home from a friend's house at knife-point. He tied the victim's hands, put tape over her eyes, and took her to a house where he raped and sodomized her. At trial, I presented circumstantial evidence along with the victim's identification, and the jury convicted the defendant on all counts. The judgment was affirmed on appeal.

Opposing Counsel:

Mary Fox

Public Defender's Office Mel Carnahan Courthouse 1114 Market Street, Suite 602 St. Louis, Missouri 63101

(314) 340-7625

18. <u>Legal Activities</u>: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

While in the Prosecuting Attorney's Office, I became acutely aware of the devastating effects of domestic violence. Later as a St. Louis Counselor, I worked with the St. Louis County Executive to establish the first residential shelter for battered women and children in St. Louis County. With the assistance of a wealthy donor, a facility was acquired, renovated and staffed with trained counselors. I worked on the formation of a not-for-profit board, The Friends of the Weinman Shelter for Battered Women and Children, and served on the board for several years. The Friends Board provided oversight for the management of the shelter and helped to raise private funds for its operation. The shelter has provided safe housing for hundreds of women and children.

In addition, as County Counselor, I served on the committee to establish a domestic violence council for St. Louis County. In 1996 the St. Louis County Domestic and Family Violence Council was created based on the legislation I prepared. I served on the Council from 1996 to 2005, working with service providers and law enforcement officials to develop policies and procedures to handle incidents of domestic violence.

Also, as County Counselor, I led the effort for the legislative approval and formation of the St. Louis County Municipal Court. This court system allowed for the establishment of three satellite courts in north, south and west St. Louis County to handle municipal ordinance violations. By holding court at night at other locations, citizens were provided better access to justice. In addition, 40,000 cases a year were removed from the State's overcrowded court system.

As Assistant Presiding Judge and Presiding Judge, I have provided guidance for the Court through difficult budgetary times. Both the State and St. Louis County fund the operations of the courts and both have been confronted with difficult financial conditions. The State and the County have asked the courts to continue to provide the same level of service with limited resources. The St. Louis County Courts have maximized their resources by using reassigned judges from other circuits. We have also used retired judges to more efficiently handle the case load of the State's largest court system.

I have not performed any lobbying activities on behalf of any clients or organizations; however, I did appear before the Missouri State Legislature as St. Louis County Counselor.

19. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses during my legal career.

20. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I receive payments from the St. Louis County Retirement System. I will receive payments, upon retirement, from the Missouri State Employees' Retirement System.

21. <u>Outside Commitments During Court Service</u>: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments or agreements to pursue outside employment, with or without compensation, if I am confirmed to be a United States District Judge.

22. <u>Sources of Income</u>: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. <u>Statement of Net Worth</u>: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I will continue to recuse on any matter involving my brother-inlaw's firm, Capes, Sokol, Goodman and Sarachan.

 Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will follow the federal statutes on recusal and the Code of Conduct for United States Judges. If necessary, I would seek advice from the Code of Conduct Committee of the Judicial Conference. In addition, I will always review cases and recuse on any matter where my impartiality might be reasonably questioned.

25. <u>Pro Bono Work</u>: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My employment by public entities limited my ability to provide pro bono legal services. However, I have served as an informal legal advisor to many of the boards and commissions I have served on, including the Friends of the Weinman Shelter for Battered Women and Children.

26. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

No judicial selection commission was established in Missouri. Persons interested in the appointment were directed to provide a resume to Senator Claire McCaskill's office, and I did so. On March 13, 2010, I was personally interviewed by Senator McCaskill.

Since August 10, 2010, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed with attorneys from the White House Counsel's Office and the Department of Justice on September 21, 2010. On December 1, 2010, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10 Rev. 1/2010

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

Rev. 1/2010	NOM	INATION FILING	(5 U.S.C. app. §§ 101-111)					
1. Person Reporting (Just)	ame, first, middle initial)	2. Court or Organization	3. Bate of Report					
Ross, John A.		District Court for the Eastern District of Missouri	12/01/2010					
4. Title (Article II) judges i magistrate judges is	ndicate active or senior status; sdicate full- or part-time)	Sa. Report Type (check appropriate type)	6, Reporting Period					
District Indge		Nomination, Date (2/01/2010	01/01/2009 to					
District 190ge		tritiat Annual Finel	11/29/2010					
		Sb. Amended Report						
7. Chambers or Office Ad	dress	8. On the basis of the information contained in this Report at modifications pertaining thereto, it is, in my opinion, in co	ad any Impliance					
Division 15, St. Louis	County Courthouse	with applicable laws and regulations.						
7900 Carondelet Clayton, Missouri 6310	15	Reviewing Officer	Date					
		Reviewing Officer	Oute					
	IMPORTANT NOTES: The in checking the NONE box for each	structions accompanying this form must be followed. Comple h part whete you have no reportable information. Sign on las	te all parts, 1 page.					
I. POSITIONS.	(Reparting Individual only; see pp. 9-13 of fi	, Hing instructions.)						
 ¬	eportable positions.)							
	POSITION	NAME OF ORGA	NIZATION/ENTITY					
. Advisory Board Me	mber ·	Commercial Bank of Westport						
2. President		Buzz Westfall Charitable Foundation						
1								
J.	4							
4.								
5.								
II. AGREEMEI	NTS. (Reporting individual only; see pp.	14-16 of filing ingreetions.)						
	eportable agreements.)							
DATI	3	PARTIES AND TERMS						
1, 2001	Missouri State F	Missouri State Employees Retirement Fund, pension upon retirement						
2. 1979	St. Louis Count	St. Louis County Employee Retirement Fund, no control						
3.								

RE REPORT	Name of Person Repair	ting		Date of Report		
	Ross, John A.			12/01/2010		
NCOME. (Reportin	g individual and spouse; se	epp. 17-24 of filling Instructions.)	ı			
ne						
investment income.)	,					
	SOURCE AND	ГУРЕ		INCOME rs, not spouse's)		
State of Missouri				\$105,423.00		
Commercial Bank	of Westport			\$600.00		
State of Missouri				\$120,484.00		
Commercial Bank	of Westport			5800.00		
State of Missouri			***************************************	\$120,484.00		
Commercial Bank	of Westport			\$1,300.00		
изгезинет тооте.)		ГҮРЕ				
Self-employed sales	consultant	:				
Self-employed sales	Self-employed sales consultant					
- pansportation, lodging, fo see pp. 23-27 of fring insur- bursements.)	od, entertainment.					
зсе pp. 25-27 of filing insert bursements.)	od, entertainment.	PURPOSE	ITEMS PAIR	O OR PROVIDED		
зсе pp. 25-27 of filing insert bursements.)	od, entertalmoent. tetiuns.)	PURPOSE	ITEMS PAIL	O OR PROVIDED		
зсе pp. 25-27 of filing insert bursements.)	od, entertalmoent. tetiuns.)	PURPOSE	ITEMS PAIL	O OR PROVIDED		
зсе pp. 25-27 of filing insert bursements.)	od, entertalmoent. tetiuns.)	PURPOSE	ITEMS PAIL	O OR PROVIDED		
	State of Missouri Commercial Bank of Missouri Commercial Bank of Missouri Commercial Bank of Missouri Commercial Bank of Missouri Commercial Bank of Missouri Commercial Bank of Missouri Commercial Bank of Missouri	Ross, John A. INCOME. (Reporting individual and sporter sence -investment income.) SOURCE AND State of Missouri Commercial Bank of Westport	Ross, John A. INCOME. (Reporting individual and spouts: see pp. 17-24 of filling instructions.) SOURCE AND TYPE State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport	Ross, John A. INCOME. (Reponing individual and spouse: see pp. 17-24 of filling instructions.) ne -investment income.) SOURCE AND TYPE (you State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport State of Missouri Commercial Bank of Westport		

FINANCIAL DISCLOSURE REPORT	Name of Teeson Reporting	Date of Report
Page 3 of 6	Ross, John A.	12/01/2010
V. GIFTS. (Includes those to spouse and dependent children) see pp.	28-31 of filing instructions.)	
NONE (No reportable gifts.)		
SOURCE	DESCRIPTION	VALUE
I. Exempt		
2.		
3.		
4.		
5,		
VI. LIABILITIES. (Includes those of sponse and dependent ch NONE (No reportable liabilities.)	sildren; see pp. 32-33 of filing lastructions.)	
CREDITOR	DESCRIPTION	VALUE CODE
i.		
2.		
3.		
4.		
S.		

FI	FINANCIAL DISCLOSURE REPORT			Nume of Poy-on Reporting						Date of Report
	ge 4 of 6	-	- 1	Ross, John	A ,					12/01/2010
VI	L INVESTMENTS and TRU				(Includes tha	sc of spouse and s	lependent chi	Udren; see	pp. 34-dû	of filing instructions.)
\Box	NONE (No reportable income, as	sets, or								_ 1
l ì	A. Description of Assets (including trust ersets)		B. one during ring period	Gross va	C. stuc et end ting period	! L	Transacti	D. Des during	reporting	
! ! !	Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code I (A-H)	(2) Type (e.g. div., rent, or int.)		(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date num/dd/yy		Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
ſi.	Pitney Bowes common stock	A	Dividence	1 1	T					
2.	Lee Enterprises common stock		None	,	7					
3.	Commercial Bank of Westport, common stock		None	J	Т					
4.	Spine Partners L.L.C.	E	Distributio	on J	T					
5.	M & I Bank money market account	А	Interest	. м	T					
6.	PNC Bank checking/money market	٨	Interest	к	T					
7.	IRA#1	В	lnt./Div.	L.	Т					
8,	-Wells Fargo money market account									
9.	-Comerica Inc. common stock									
10.	IRA #2	A	Divideod	J	Т					
11.	-Van Kampen Govt. Securities Fund									
12.	J P Morgan Smart Retire 2030 retirement account	В	Dividend	K	т					
13.	Missouri 2020 Fund deferred compensation fund Templeton Dev	^	Dividend	()	Т					
14.										
15.										
16.	-									
17.										
									-	
	ncome Clain Codes: A =\$1,000 or less		B=\$1,001 - \$2			· \$5.000		01 - \$15,000		E =\$15,001 - \$50,000
	See Cohomas B1 and D4) F = 450,001 - \$100,000 Value Codes J = \$15,000 or less		G =\$100,001 - 5 K =\$15,001 - \$			000,000,022 - 119,000 000,00012 - 11		er (han 13.6),001 - \$250		
	See Columna Ct and D3) N = \$250,001 - \$500,000		O ~\$100,001 -		P1 ~\$1,00	90.001 - 53,000,000		00.001 - 53		
j 3. v	P3 =525,000,001 - 559,000,000 P4 =Mare thin 550,000,000 P4 =Mare thin 550,000,000 P4 =Mare thin 550,000,000 P4 = Markin Paluc Michael Eader Only) S = Assessment T = Clash Markin									

FINANCIAL DISCLOSURE RELORS	Name of Person Reporting	Date of Report (2/01/2010
Page 5 of 6	Ross, John A.	12/03/2010

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Reports)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 6 of 6	Ross, John A.	12/01/2010

IX. CERTIFICATION.

I certify that all information given above (lockeding information pertaining to my spouse and minor or dependent children, if any) is acreate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory providions permitting aon-disclosure.

.
I forther certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Jodicial Conference regulations.

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (S U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES				
Cash on hand and in banks	175	962	Notes payable to banks-secured				
U.S. Government securities			Notes payable to banks-unsecured				
Listed securities - see schedule	6	464	Notes payable to relatives				
Unlisted securities - see schedule	15	375	Notes payable to others				
Accounts and notes receivable:	ts and notes receivable: Accounts and bills due						
Due from relatives and friends			Unpaid income tax				
Due from others			Other unpaid income and interest				
Doubtful			Real estate mortgages payable – personal residence		93	475	
Real estate owned - see schedule	542	000	Chartel mortgages and other liens payable				
Real estate mortgages receivable			Other debts-itemize:				
Autos and other personal property	58	000					
Cush value-life insurance							
Other assets itemize:							
- Retirement Accounts - see schedule	106	941					
- College Savings Plan (American Century International Growth Portfolio)	3	286					
·			Total liabilities		93	475	
			Net Worth		814	553	
Total Assets	908	028	Total liabilities and net worth		908	028	
CONTINGENT LIABILITIES			GENERAL INFORMATION				
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	NO			
On leases or contracts			Are you defendant in any suits or legal actions?	NO			
Legal Claims			Have you ever taken bankruptcy?	NO			
Provision for Federal Income Tax							
Other special debt							

665

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Pitney Bowes (PBI)	\$ 4,939
Lee Enterprises (LEE)	1,525
Total Listed Securities	\$ 6,464
Unlisted Securities	
Commercial Bank of Westport	\$ 375
Spine Partners LLC	15,000
Total Unlisted Securities	\$ 15,375
Real Estate Owned Personal residence Family residence (25% interest) Total Real Estate Owned	\$ 492,000 50,000 \$ 542,000
Retirement Accounts JP Morgan Smart Retire 2030 Missouri 2020 Fund Wells Fargo Money Market Account Comerica Inc. stock (CMA) Van Kampen Govt. Securities Fund Total Retirement Accounts	\$ 22,754 6,066 63,428 8,388 6,305 \$106,941

AFFIDAVIT

I, TOHN ANDREW ROSS, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

11/29/2010 Soh Quelrew Ross (NAME) 29 Nov. 7010

Circuit Court of St. Honis County

DIVISION 15 7900 CARONDELET AVENUE CLAYTON, MISSOURI 63105

JOHN A. ROSS CIRCUIT JUDGE (314) 615-1515

January 5, 2011

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on December 1, 2010, to be United States District Judge for the Eastern District of Missouri. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate

- On December 16, 2010, I was a Speaker at the St. Louis County Bar Association's Annual State of the Bench and Bar Meeting. I have no notes, transcript or recording. The address of the association is 7905 Forsyth, Clayton, Missouri 63105 (Question 12d)
- I presided over one additional case that has gone to verdict, therefore the total number of cases presided over that have gone to verdict or judgment is approximately 327.
 (Question 13a)

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely, Shu A. Ross John A. Ross

Sohn A. F

Ranking Member Committee on the Judiciary United States Senate

cc: Senator Charles Grassley

Washington, DC 20510

AO 10 Rev. 1/2010

FINANCIAL DISCLOSURE REPORT NOMINATION FILING Report Required by the Ethics In Government Act of 1978 CULYC case St 101,111

I. Person Reporting (last name., first, middle initial) Ross, John A. District Court for the Eastern District of Misson District of Misson District of Misson San Report Type (check appropriate type) San Report Type (check appropriate type) Nomination. Date 01/05/2011 Initial Annual Fin San Amended Report 7. Chambers or Office Address Division 15, St. Louis County Courthouse 7900 Carondelet Clayton, Missouri 63105 IMPORTANT NOTES: The instructions accompanying this form must be followed. Checking the NONE box for each part where you have no reportable information. Sign	6. Reporting Perhad 01/01/2010 to 12/23/2010 Report and any ton, in compliance						
A. Tille (Anlela III judges indicate solive or senior status; magistrate judges indicate solive or senior status; magistrate judges indicate full- or post-lime) District Judge District Judge 3. Chambers or Office Address Division 15, St. Louis County Courthouse: 7900 Carondelet Clayton, Missouri 63105 IMPORTANT NOTES: The instructions accompanying this form must be followed.	6. Reporting Perhad 01/01/2010 to 12/23/2010 Report and say on, in compliance						
magistrate judges indicate full- or post-lime) District Judge Nomination, Date BI/05/2011 Initial	01/01/2010 to 12/23/2010 Report and say ton, in compliance						
Division 15, St. Louis County Courthouse 7900 Carondelet Clayton, Mixsouri 63105 IMPORTANT NOTES: The instructions accompanying this form must be followed.	lañ, In compliñace						
IMPORTANT NOTES: The instructions accompanying this form must be followed. checking the NONE bax for each part where you have no reportable information. Sign							
	Complete all parts, 1 on last page.						
NONE (No reportable positions.) POSITION NAME OF C	ORGANIZATION/ENTITY						
. Advisory Board Member Commercial Bank of Westport							
2. President Buzz Westfall Charitable Foundal 3.	lión						
<u> </u>							
II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.) NONE (No reportable agreements.)							
<u>DATE</u> PARTIES AND TERM	∆S						
. 2001 Missouri State Employees Retirement Fund, pension upon retirement							
2001 Missouri State Employees Retirement Fund, pension upon retirement	1979 St. Louis County Employee Retirement Fund, no control						

FINANCIAL DISCL Page 2 of 6	OSURE REPORT	Name of Person E., pa Ross, John A.	rdng		Date of Report 01/05/2011
III. NON-INVESTME	ENT INCOME. (Reports	sg Individual and spause; s	ee pp. 17-24 of filing Instructio	#Lj	
A. Filer's Non-Investment	Income				
NONE (No reportab	le non-investment income.)			
DATE		SOURCE AND	TYPE		INCOME rs, not spouse's)
1, 2010	State of Missouri				\$115,463.91
2, 2010	Commercial Bank	of Westport			\$1,000.00
3, 2009	State of Missouri				\$120,484.00
4. 2009	Commercial Bank	of Westport			\$800.00
5.					
£					
DATE	Self-employed sale:	SOURCE AND	TYPE		
		CONSTRUCT			

l.			W4		
			- · · · · · · · · · · · · · · · · · · ·		
V. REIMBURSEME! includes thate to spouse and dependens NONE (No reportable	children; see pp. 75-27 of filing insire	od, entertainment sciions.}			
SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAIL	OR PROVIDED
. Exempt					
· · · · · · · · · · · · · · · · · · ·					

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Roas, John A.	والمعامرين والمعامرين	Date of Report 01/05/2011
V. GIFTS. (Includes those to spouse and dependent children; see p	p. 28-31 of filing instructions.)		
NONE (No reportable gifts.)			
SOURCE	DESCRIPTION	1	VALUE
). Ехетрі			
2.			
i			
1.			
VI. LIABILITIES, (Includes those of spouse and dependent	children; see pp. 32-33 of filing instructions.)		
NONE (No reportable liabilities.)			
CREDITOR	DESCRIPTION	VAL	UE CODE
	Parameter Workland (Alternative Control of C	***	

i.			

FI	FINANCIAL DISCLOSURE REPORT			Name of Person Deporting						Date of Report
	ge 4 of 6			Ross, John A.						01/05/2011
VI	I. INVESTMENTS and TRU				(Includes the	ote of spowle and c	iepandens zh	ildran; sei	рр. 34-60	of filing instructions;
_ 	A. Description of Assets (including inust assets)	B. ome during sting period	C. Gross value at end		D. Transactions during reporting				period	
-	Place "(X)" after each asset exempt from prior disclusure	(1) Amount Code I (A-H)	(2) Type (e.g. div., ren), or int.)		(2) Value Method Code 3 (Q-W)	(1) Type (c.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (I-P)	(4) Gain Code I (A-H)	(5) Identity of buyer/seller (if private transaction)
i.	Pitney Bowes common stock	^	Dividence	J J	т					
2.	Lee Enterprises common stock		None	1	Т					
3.	Commercial Bank of Westport, common stock		None	,	Ť					-
4.	Spine Partners L.L.C.	E	Distributio	on J	т					
5.	M & I Bank money market account	٨	Interest	м	Т					
6.	PNC Bank checking/money market	٨	Interest	к	Т					
7.	IRA #1	A	Int./Div.	L	т					
8.	-Wells Fargo money market account									
9.	-Comerica Inc. common stock									
10.	1RA #2	Α	Dividend	J	т					
11.	-Van Kempen Govi, Securities Fund									
12.	J P Morgan Smart Retire 2030 retirement account	٨	Dividend	к	т					
13.	Missouri 2020 Fund deferred compensation fund Templeton Dev	A	Dividend	J	Ť					
14,										
15.										
16.										
17,										
(Sr 7. Va (Sr	ame Griss Codu: A #\$1,000 or less Cobumes B) and LH) F =\$50,001 - \$100,000 F =\$50,001 - \$100,000 C =\$00 - \$100,000 N #\$150,001 - \$500,000 P =\$250,000 - \$500,000 P =\$250,000 or \$500,000 O =\$400,000 D =\$250,000 O =\$400,000	600 000	-\$1,001 - \$2,5 -\$100,001 - \$ -\$15,001 - \$5 -\$500,001 - \$	1,000,000 0,000 1,000,000	L =\$50,000 P1 =\$1,000	0,001 - \$5,000,000 0,000,000 - \$5,000,000 0,000,000,002 assis	1/2 =Mon M =\$100.	- \$15,000 : than \$5,00 001 - \$750,0 0,001 - \$25	900	E =\$15,001 - \$50,000

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Ross, John A.	The Allienter of the State of t	01/05/2011
VIII ADDITIONAL INCODMATION OF	EVDI ANATIONS		<u> </u>

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Report.)

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Plame of Person Reporting Ross, John A.	Date of Report 01/05/2011

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, not complete to the best of my knowledge and belief, and that any information not reported was withheld because it mel applicable attetutory provides a permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in complisace with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (S U.S.C. app. § 134)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES				
Cash on hand and in banks	177	404	Notes payable to banks-secured			
U.S. Government securities-add schedule			Notes payable to banks-unsecured			
Listed securities - see schedule	6	718	Notes payable to relatives			
Unlisted securities - see schedule	15	375	Notes payable to others			
Accounts and notes receivable:			Accounts and bills due			
Due from relatives and friends			Unpaid income tax			
Due from others			Other unpaid income and interest			
Doubtful			Real estate mortgages payable personal residence		97	600
Real estate owned see schedule	542	000	Chartel mortgages and other liens payable			
Real estate mortgages receivable			Other debts-itemize:			
Autos and other personal property	58	000				
Cash value-life insurance						
Other assets itemize:						
- Retirement Accounts - see schedule	26	923				
- IRA Accounts - see schedule	78	254				
- College Savings Account - see schedule	3	722	Total liabilities		97	600
			Net Worth		810	796
Total Assets	908	396	Total liabilities and net worth		908	396
CONTINGENT LIABILITIES			GENERAL INFORMATION			
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	NO		
On leases or contracts			Are you defendant in any suits or legal actions?	МО		
Legal Claims			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax						
Other special debt						

674

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities		
Pitney Bowes (PBI)		\$ 4,953
Lee Enterprises (LEE)		1,765
Total Listed Securities	***************************************	\$ 6,718
Unlisted Securities		
Commercial Bank of Westport		\$ 375
Spine Partners LLC		15,000
Total Real Estate Owned	5	15,375
Peal Catata Over 1		
Real Estate Owned Personal residence	_	
	\$	492,000
Family residence (25% interest)		50,000
Total Real Estate Owned	\$	542,000
Retirement Accounts		
JP Morgan Smart Retire 2030	\$	22,163
Missouri 2020 Fund	\$_	
	\$	26,923
	•	20,723
IRA Accounts		
Wells Fargo Money Market Account	\$	63,456
Comerica Inc. shares	\$	8,824
Van Kampen Govt. Securities Fund		5,969
•	<u>\$</u> \$	78,254
College Savings Account	\$	
American Century International Growth Portfolio		3,722

Senator COONS. Thank you. Thank you to all five of our nominees for sharing your families and friends with us and for beginning this process.

I would like to now move to the questions, if we can. We are

going to do 10-minute rounds.

I would like to begin by just asking, if I could, each of you in turn to briefly describe your judicial philosophy, how you see the challenge of serving as a Federal district court judge.

Ms. Torresen.

And we will go in the same order in which you introduced your-

selves, if you would.

Ms. Torresen. Thank you for the question, Senator. I would say that my philosophy is really about what I am going to do, if I am lucky enough to be confirmed, and in any case I would approach the courtroom with an open mind. I would listen carefully to the arguments presented by both sides. I would ascertain the facts, and then I would start to study the law in that area. I would apply existing precedents from the Supreme Court, and the First Circuit in my instance. And I would try to resolve the case, the controversy before me as narrowly as possible. And I think that sums up what I think the judge's role is and in some ways is really my philosophy as well.

Senator Coons. Thank you, Ms. Torresen.

Ms. Brown.

Ms. Jolivette Brown. Thank you for the question, Senator. Should I be confirmed, my judicial philosophy would embody three basic principles: stability, predictability, and civility. In that regard, I would treat every party and litigant and participant appearing before me with fairness and neutrality. I would only decide issues that are properly before me. I would have a commitment to the rule of law and precedent. And, finally, my judicial philosophy would be to preside on every matter with a calm, even temperament. So in that regard, Senator, that would constitute my judicial philosophy, should I be confirmed.

Senator Coons. Thank you, Ms. Brown.

Mr. Kuntz.

Mr. Kuntz. Thank you very much for the question, Senator. I agree with what has been said, and I would say that careful listening, patience, and humility in terms of the proper role of the judge are the things that I would bring to the table, if am fortunate enough to be confirmed. I think those are elements that are crucial.

Senator Coons. Thank you, Doctor.

Judge Cain.

Judge CAIN. Thank you for the question, Senator. I agree with what my fellow panel members have stated, and the approach I have tried to take for the last 11 years is to be a neutral and unbiased arbiter of the cases that come before me, and to take the facts of each case and apply the law to the facts without passion or prejudice, and try to ensure that the trial or hearing is conducted in a way that even though a party may not get the result they want, they leave the courtroom feeling that they have had a full and fair opportunity to be heard.

Thank you.

Senator Coons. Thank you, Judge.

Judge Ross.

Judge Ross. Thank you, Senator. Again, I fully believe that everyone is entitled to a full and fair day in court, and every litigant who comes into my courtroom is entitled to be treated with respect and dignity. And I try and listen very carefully and listen to all sides in any case and apply the law to the facts, and that would be my intent.

Senator Coons. Thank you.

If I could, in the next round I would be interested in hearing each of you speak more specifically to your view of precedent, how you would approach the use of precedent, and also what is the role of courts in interpreting laws written and passed by elected legislative bodies as well. So the combination of legal precedent and what standards or practices or approach or philosophy you would apply to the interpretation of laws enacted by legislative bodies.

Ms. Torresen.

Ms. TORRESEN. Thank you for the question. As far as precedent goes, I would consider myself strictly bound by the Supreme Court precedent and by precedents from the First Circuit Court of Appeals. Their word is the final say, and I would apply what the law is as they have interpreted it.

As far as statutes go, I think any judge starts with the plain meaning of the statute, and that is what I would do as well. You decide whether it is clear on the face of the statute what the statute says, and if there is ambiguity, then you look to the purpose of the statute, what was the Congressional intent behind the statute. And, generally, you can make out what the statute means and what you should do by those two tools.

Senator Coons. Thank you, Ms. Torresen.

Ms. Brown.

Ms. Jolivette Brown. Thank you for that question, Senator. I understand that if I am confirmed as a Federal district court judge, I am bound by precedent. So I would be following the precedents set by the United States Supreme Court and the Fifth Circuit

Court of Appeal.

Secondarily, when it comes to the legal interpretation of laws enacted, I agree with Ms. Torresen that you must first begin with the text of that law and look to the plain and obvious meaning. If you cannot come to a conclusion at that point, then you should look to Supreme Court and appellate court precedent, again, for either authority on point or analogous points. And then secondarily, by analogy, you can look to other State court precedents; and, finally, to the legislative purpose or intent if that is available.

Senator Coons. Thank you, Ms. Brown.

Mr. Kuntz.

Mr. Kuntz. I agree that legal precedent, Mr. Chairman, is key and is binding, and I would look to Supreme Court precedent in the first instance and to the precedent of the Second Circuit beyond that.

In terms of statutes enacted by the Congress, I would certainly follow the plain language of those statutes. That is what you look to determine what the legislator meant and what the legislature has meant, and that is where I would focus my attention.

Senator Coons. Thank you, Doctor.

Judge Cain.

Judge CAIN. Thank you for the question, Senator. If I am fortunate enough to be confirmed, I would review any applicable Federal statutes and construe them, the words of those statutes, in accordance with their plain and ordinary meaning. And I would also look to precedent as established by the U.S. Supreme Court and the Fourth Circuit Court of Appeals and follow that precedent. Predictability is very important in our system, and I would continue to do that as I have done on the State court level.

Thank you.

Senator COONS. I will confess to being partial to the Third Circuit myself.

[Laughter.]

Judge CAIN. Yes, sir.

Senator Coons. Judge Ross.

Judge Ross. And I would agree with my colleagues. Initially, you would look at the plain language of the statute and the legislation and then be bound by the precedent, in my situation the Eighth Circuit and the United States Supreme Court, and I would follow the precedent in all circumstances.

Senator Coons. Thank you.

For the first three, you have spent much of your legal careers as advocates in different roles, whether in practice in law firms or in various roles in Government roles. But more often than not, you have appeared in courtrooms as advocates, and I would be interested in hearing from each of you how you view the role of a district court judge as distinct from that of an advocate and how you will make the transition from long and successful careers as advocates to being more judicial in your temperament.

Ms. Torresen.

Ms. Torresen. Thank you for the question. I realize that as an advocate you are trying to put forth your party's case in the best light for your party, making every reasonable argument that you can. That is sort of putting a spin on the ball, so to speak. And I

certainly have done that in my career.

I will say that as a Federal prosecutor I see my role not quite to win the conviction, so to speak, but I see my role to see that justice is done. And as part of that, I think I take an objective view of things, and I try to consider all sides, particularly in the stage where we decide whether to charge a case or who to charge and what to charge. So I do think I have some sort of more middle-of-the-road experience with that, and I think that will be helpful in making the transition to becoming a District Judge if I get confirmed.

I do see the need for a District Judge to be completely openminded and not biased in any way, and I understand that, and I believe I could do that with ease, actually, and I hope to get the opportunity to do so.

Thank you.

Senator Coons. Thank you, Ms. Torresen.

Ms. Brown.

Ms. Jolivette Brown. Thank you for the question, Senator. In making the transition, I think I would look to the totality of my professional experiences. I have spent a large amount of my career

as an advocate and as a litigator, but I have also spent some time in the role as counselor and adviser in many transactional matters. And in my current position as city attorney, I advise various political and elected officials and boards and commissions.

I have also been a mediator, and a mediator is a trained neutral. I have been a law professor. As a city authority, I am lead pros-

ecutor on municipal and traffic violations.

So if you look at the totality of my professional experience, I think you can find what I see as guiding principles of neutrality and fairness. I have a strong commitment to the rule of law and applying precedent because I have stood in many different roles and fully appreciate that. So I think that I could make a smooth transition to the judiciary with those guiding principles.

Senator Coons. Thank you, Ms. Brown.

Dr. Kuntz, if you might answer, and then we will turn to Senator

Grassley.

Mr. Kuntz. Thank you, Mr. Chairman. In my experience as a 33year practitioner in the commercial world, I represented both plaintiffs and defendants, and so I was on both sides of the aisle in that

regard.

I think the most relevant experience is my 23 years that you hear Senator Schumer advert to on the Civilian Complaint Review Board, which is a quasi-judicial post where we would take complaints and have answers from police officers and make recommendations to the police commissioner. We did not have the power to impose discipline, but we would make recommendations. And there we were always fair and impartial and would listen to both sides. It was, as he alluded to, very demanding work, but it is something where I always strove to be worthy of serving the people of New York in that capacity. So I have had that experience and think that it is relevant to the kind of work that I would be doing if I am fortunate enough to be confirmed as a district court judge.

Senator Coons. Thank you, Dr. Kuntz.

Senator Grassley.

Senator GRASSLEY. Yes, welcome again. I will have different questions for each one of you. I will have some that are a little more specific, but some along the same lines as the Chairman has just asked. So I do not want you to think I did not hear your answers there, but there is an old saying around the Senate: "Everything that has been on this subject has been said, but I have not said it and, by golly, I am going to say it."

[Laughter.]

Senator GRASSLEY. So I am going to start, and I am going to just concentrate on one person for two or three questions. Some of you

will only have one question.

For you, Ms. Brown, I understand an area of interest for you has been environmental law. In addition to representing national environmental groups, you have taught courses on the subject, including a course on environmental justice. As a judge, you, of course, will be asked to put aside your personal views and make decisions based on the law and facts before you.

Do you believe you will have any difficulty making the transition?

Ms. JOLIVETTE BROWN. Absolutely not, Senator.

Senator Grassley. Okay. In 2009, you wrote an article on environmental justice and how its supporters can sometimes be in conflict with traditional environmental groups. How would you define and identify environmental justice? And, second, what role do you believe the court should play in addressing concerns about environmental justice?

Ms. JOLIVETTEBROWN. Thank you for that question, Senator. Should I be confirmed and should I get an issue of environmental justice before me, rest assured that I would rely on the guiding precedents of the Supreme Court and the Fifth Circuit Court of Appeal and apply—and carefully listen to the facts and apply the law to the facts. And nothing else would come into my consideration.

Senator Grassley. Okay. I believe you answered the second part of it. Could you define and identify the term "environmental justice"?

Ms. JOLIVETTE BROWN. Senator, that is a term that different groups have a different definition to, and it is one that is left to judicial interpretation as well. So I would not feel comfortable giving you a definition that would be construed as my personal opinion on the topic.

Senator GRASSLEY. Well, I can understand why you would not want to say something now that would impact whether you were impartial in a court. But surely if you wrote on this subject, you have some idea of what environmental justice is. So just from the

standpoint of your writing, how did you define it?
Ms. JOLIVETTEBROWN. Well, Senator, in that particular article, I think what I was relaying was the differences in the interpretation of environmental justice by civil rights organizations and how traditional environmental organizations sometimes interpret the environment, and that civil rights organizations tend to want to include the urban environment, and traditional environmental groups look to the traditional air, water, and soil as the environment.

Senator Grassley. Okay. Thank you. This is the last question for you. Do you believe that economic considerations such as job opportunities for residents should be taken into account in litigation that seeks to prevent an undesirable industry from being located

in a poor community?

Ms. JOLIVETTE BROWN. Senator, if I were fortunate enough to be confirmed and that issue were presented before me, I would only look to the prevailing precedents on that topic from the Supreme Court and the Fifth Circuit Court of Appeal. Any personal opinion I would have, I would check at the front door of the courthouse.

Senator Grassley. You know what? I said that was the last question, but I have one other one.

Senator Grassley. In July 2002, you participated in an environmental racism panel stating environmental racism is "just another symptom of general racism. We are not going to get environmental justice in this country until we get full social and economic justice."

I do not want you to apply that to any case or worry about anything you say applying to a case. I just want to know what you meant by that statement.

Ms. Jolivette Brown. If that is a statement that was reported somewhere and a statement I did not necessarily write myself, I can try to interpret that from that, and I think from that it is that the injustices people recognize in the environmental environment are very similar to some of the overall societal ills that we face in

this country.

Senator Grassley. Okay. I have a couple questions for you, Ms. Torresen. You have been very involved in the Mabel Wadsworth Women's Health Center. In fact, you served on that organization's board from 2006 to 2009. The Mabel Wadsworth Women's Health Center is one of the only clinics providing abortion-related services in Bangor. According to their website, the center is also very involved in advocacy of abortion rights. In 2009, the center held a vigil for Dr. George Tiller. Dr. Tiller was a medical doctor in Wichita, Kansas. At the time of his murder, he was one of three doctors in the Nation that would provide late-term, post-21-week abortions to women. The center described Tiller as "inspirational," and "hero and a leader." The quote is "inspirational," and the quote is also "hero and leader."

While murder is categorically wrong, calling a late-term abortion doctor a "hero" suggests the center holds extreme views on women's

rights to obtain an abortion.

Do you think Dr. Tiller is inspirational, a hero, and a leader?

Ms. Torresen. Thank you for the question, Senator Grassley. I would like to say that the Mabel Wadsworth Women's Health Center is a place where women can receive health care services on a broad spectrum, and it covers women from puberty through post-

menopausal years.

I was affiliated as a director of the board for 3 years of that 2006 to 2009, as you said, and I am not familiar with the particular newsletter or whatever you are citing there. I was not aware of it. I am pretty busy and have not read every one of those. But I believe that the center's views are not squarely aligned with mine. I do not have an opinion as to whether Dr. Tiller is an inspiration or a hero. I have not really studied it, and I really know about him tangentially through the news media but not more than that.

I do not believe that—I know that the Mabel Wadsworth Center does not provide abortions in late terms, and I would say that any opinions that I have on that topic I would leave outside the courtroom, and I would apply whatever the existing precedents are for

both the Supreme Court and the First Circuit.

Senator Grassley. On another point, did you have any concerns about your role with the center in your position as Assistant U.S. Attorney?

Ms. TORRESEN. Before I joined the board, I spoke with our office's ethics adviser and had that cleared so that I could be sure that I was not in violation by doing that outside community service?

Senator Grassley. I have another question along that line that I am going to ask you to answer in writing.

[The information referred to appears as a submission for the record.]

Senator Grassley. In a letter to the editor of the Bangor Daily News, you strongly criticized the local YWCA for choosing not to accept a \$25,000 gift for cancer education of lesbian women. The YWCA said that it could not accept money advocating rights or positions of only a particular group. You wrote, "It is clear that homophobia is behind the YWCA's decision to reject the money. The YWCA's implicit message is that it does not care if lesbian women die of breast cancer. Pretty hard to take from a group whose mission is to empower all women."

Is this an accurate account of your letter to the editor?

Ms. TORRESEN. I believe that is an accurate account of my letter to the editor.

Senator Grassley. Do you believe that the YWCA does not care if lesbian women die of breast cancer?

Ms. TORRESEN. That was a bit hyperbolic, and I realize now——Senator Grassley. That is enough.

Ms. Torresen. Okay.

Senator GRASSLEY. Do your comments illustrate an appropriate temperament for a Federal judge? I think that is an appropriate question.

Ms. TORRESEN. That is an appropriate question. I thank you for

it, and I thank you for the opportunity to address it.

I wrote that I think 16 years ago, and I believe I have matured since then. I certainly have learned the lesson that nothing is ever lost by courtesy. I have been in the trenches in the Federal courtroom, and I know full well the pressure that the litigants are under, and I would treat all litigants in the courtroom, if I were lucky enough to be confirmed, with respect.

Senator GRASSLEY. Okay. I am going to go out here and have a little meeting, and then I will be back at the end of your 10 min-

utes. Is that OK?

Senator Coons. I may not go 10 minutes.

Senator GRASSLEY. Okay. I will be available, so just call me in whenever you are ready.

Senator Coons. Certainly, Senator. Thank you, Senator Grass-

ley.

I did not want to neglect the two judges on our panel today. Having previously asked questions of the other three nominees about their experience as advocates and how they would transition from their role as an advocate to a Federal judge, I just wanted to ask both of you what lessons you have learned in your experiences in your current judicial roles and how you would apply them to the distinguishable role of a Federal district court judge.

Judge Cain.

Judge CAIN. Thank you for the question, Senator Coons. Over the last 11-plus years, I have had the good fortune to hold court in 17 counties throughout the State of South Carolina. I have had folks come before me of modest means, and I have had folks come before me in court who have great wealth. And I think everyone needs to be fed out of the same spoon, regardless of their station in life, and I have tried to approach my job in that fashion.

Of course, at the State court level, we operate under the South Carolina Rules of Civil Procedure, which are modeled under the—by the Federal rules and the Rules of Evidence, which are modeled after the Federal Rules, and I would continue, if I am fortunate enough to be confirmed, to try to make sure that everyone who comes into court, regardless of their station in life, receives a full

and fair opportunity to present their case and to feel comfortable that they have had a judge who has conducted their hearing in a fair and impartial manner. And I would hope to be able to bring that same philosophy to the Federal bench.

Senator COONS. Thank you, Your Honor.

Judge Ross.

Judge Ross. Thank you, Senator. If I am fortunate enough to be confirmed, I think my broad range of experience in the past will benefit me in making this transition. I started out in the prosecuting attorney's office handling all criminal cases, and then spent 9 years as the county attorney in St. Louis County overseeing all of the civil litigation for county government. Some of that litigation was Federal litigation. And in my 11 years as a circuit judge in the busiest circuit in the State of Missouri, I have seen a wide variety of cases, and I think all of that experience will help me make the transition again, if I am fortunate enough to be confirmed. And I think, again, that it will be a transition, and I understand that I will have things to learn, but I think that all of those experiences will assist me in making that transition.

Senator Coons. Thank you, Judge.

I have just one last question for the whole panel. I would be interested in your views on, as a Federal judge, what role you have in ensuring fair and equal access to our courts, to our judicial system, to appropriate treatment. You have all made some reference to it in passing, but I would just be interested in your view on how you would view your role in ensuring equal and fair access to our judicial system.

Ms. Torresen.

Ms. TORRESEN. I think I need a little clarification on the question. What do you mean by "fair and equal access to the judicial system"?

Senator COONS. Well, you make rulings as a district court judge that can have some impact on whether or not litigants appearing before you really have the opportunity to be heard, and I think in voir dire you also have a role in making sure that they are being reviewed, judged as it were, by a jury of their peers. Those are just two suggestions. You also ultimately set some of the rules and have input into the fees that are paid and the process by which a case gets before you as a district court judge. I am just suggesting a couple of the vectors that are of some concern to me.

All of you have had significant lengthy exposure to the judicial process in your respective States. The Federal courts sit in a sort of particular place in that, but cases are fed up into district courts by a variety of means, and there have been some questions in our history as to whether or not all cases arrive with the same standing in front of Federal courts.

So I was just interested in your particular views based on your own particular experiences about how we ensure equal access to justice for all Americans.

Ms. Torresen. Thank you for the question and thank you for the clarification. I think the District of Maine may be somewhat unique in this regard. For my fellow panel members, it may be slightly different. But in Maine, I do not see an issue with people having fair

and equal access to the Federal courts, and I think everybody that

comes to the Federal court is treated fairly and equally.

There are instances, I am sure, where if money is an issue, there are court-appointed lawyers that are available that the courts can provide in the criminal context, and that is done routinely. Also, for waiving certain fees like special assessments, those are often waived in the case of someone who has the inability to pay. So I do not see that as a particular problem in the District of Maine.

do not see that as a particular problem in the District of Maine. Also, Maine is a State which I think the recent census data is something like 98 percent white, and that is, you know—when we empanel a jury, almost all of the people in the panel are white. And that is an issue, but we do not—you know, that is just the demographics of the State of Maine.

So I really do not see that we have an issue of an unfair or a situation where someone is not getting access to judgment in the

Federal court.

Senator Coons. Thank you, Ms. Torresen.

Ms. Brown.

Ms. Jolivette Brown. Thank you for the question. There are a number of ways I see that we can address the issue of fair and equal access to justice. As you know, I have spent a lot of time as a mediator. Mediation is a part of the Federal practice now. I think mediation is a cost-efficient and effective way to move litigants

through the system in a way that is less costly to them.

Secondarily, for those who choose to continue on, I think early status conferences and opportunities to bring the parties together again moves those matters along. And I think all of those things add to the overall access and fairness and justice to all. And just the simple fact that parties should feel confident when they appear before any court that only the issues properly presented before them will be heard, they should feel confident that they are being treated fairly despite their position or walk in life.

And so I think all of those three things take into account those ways that we can play a role in fairness and access to justice for

all.

Senator Coons. Thank you, Ms. Brown.

Mister—Dr. Kuntz.

Mr. Kuntz. Please, "Bill" is fine, Mr. Chairman. Thank you.

In Brooklyn, we do have some of these issues in the Eastern District of New York, and there are a number of things that I have been involved with, and others have as well. The expansion of CJA panels, Criminal Justice Act panels, is important. The involvement in bar association activities is also important, such as Federal Bar Council. And we have a very fine group of magistrate judges who have been very active in terms of helping the district court judges to provide access to the courts for more and more people. I think this is an area that is of immense importance, and particularly in the habeas area as well.

So I have been involved for 33 years as a litigator through bar association activities and, if I am fortunate enough to be confirmed, would certainly continue those efforts to enhance accessibility. And I thank you for the question, Mr. Chairman.

Senator Coons. Thank you, Dr. Kuntz.

Judge Cain.

Judge CAIN. Thank you for the question, Senator.

Everyone should have access to justice and access to the courts regardless of their station in life. And just to follow up on my response to an earlier question, I have had folks in my courtroom of modest means and great means, and the courtroom is a place where everyone should be treated the same and treated fairly, re-

gardless of their station in life.

On the State level in which I work, our State Supreme Court has done a good job of ensuring access to the courts by all persons and has set rules and procedures by which filing fees can be waived when appropriate, and I follow those guidelines and procedures. And when a party applies to file an action or a motion and be exempted from the requirement of a filing fee, if it fits within the parameters established by my State Supreme Court, I freely waive that.

Thank you.

Senator Coons. Thank you, Your Honor.

Judge Ross.

Judge Ross. I also think it is very important to provide access to the courts, and I think it is important to be sensitive to the rising costs of litigation. And certainly at the State court level, we have seen an increase in pro se litigants trying to file cases on their own, and we have taken a number of steps in our court to assist pro se litigants and indigent litigants to have access to the courts. And I would continue that practice if I am fortunate enough to be confirmed.

Senator Coons. Thank you, Your Honor.

My time has expired, and I will defer now to Senator Grassley. Senator Grassley. Dr. Kuntz, I see you left a lot of money at Harvard.

[Laughter.]

Senator GRASSLEY. Are there any other degrees you can get from

Mr. Kuntz. My late father-in-law, Senator, wondered if I would ever get a job and stop going to school.

[Laughter.]

Mr. Kuntz. I am pleased to report that—

Senator GRASSLEY. Do not interpret any of my questions as keep-

ing you from getting a job so your father-in-law is happy.

For you, sir, on the living constitutional theory, Judge Scalia said this—and I am only using this as an offshoot. I am not asking you what you think about what he said. "The risk of assessing evolving standards is that it is all too easy to believe that evolution has culminated in one's own views." So you can understand why the independence of a Federal judge is very important.

Do you believe that judges should consider evolving standards when interpreting the Constitution?

Mr. Kuntz. I believe they should not. I believe the Constitution is written and it says what it means and it means what it says. And when it is time to amend the Constitution, the people of this Nation amend the Constitution, not the non-elected judges.

Senator Grassley. I think you also answered my second question, but let me ask it anyway. Do you believe that it is ever appropriate for a Federal judge to incorporate his or her own views when interpreting the Constitution?

Mr. Kuntz. Never.

Senator Grassley. If confirmed, what sources will you look to

when interpreting provisions of the Constitution?

Mr. Kuntz. You look to the words of the Constitution. I have studied at the level of doctoral history constitutional history, and you look to the words. The Founders battled over every clause, and it is there for a reason, and that is what you look to.

Senator Grassley. Thank you.

Mr. Ross, Judge Ross, at the time you were a county counselor, there was an incident where members of the county Private Industry Council sent an anonymous fax to members of the council and the local media criticizing the director of administration for actions he had taken. One of the whistleblowers was forced to resign. Both filed suit asserting their rights under the First and 14th Amendments. You were quoted by the media stating your belief that neither had a cause of action. The district and appellate courts did not agree with you, and the county subsequently passed whistleblower legislation.

You may not know that I am very active in protecting whistleblowers, so you know the interest behind my question. So I want

to ask two questions that follow on that.

Well, the first question is divided into two parts. Why did you

think the council whistleblowers had no valid suit?

Judge Ross. Thank you, Senator, for the question. My initial review of the lawsuits when they were filed was that they did not state a cause of action. It was purely a legal analysis of the lawsuits as they were initially filed.

They were later amended. There were additional claims that were raised. We did file a motion to dismiss that was denied, and

the lawsuits were subsequently settled.

But my initial comments were based solely upon an initial review

of the lawsuits as they were filed.

Senator Grassley. Okay. If confirmed as a Federal District Judge, what will be your approach to whistleblower suits? Will whistleblower plaintiffs be treated fairly in your courtroom?

Judge Ross. I know I have had a number of whistleblower lawsuits since I have been a judge, and I think I have followed the law and would always follow the law as it applies to a whistleblower. I think whistleblowers can play a very important role and do play a very important role. So I would certainly follow the law as it ap-

plies to those kinds of cases.

Senator Grassley. My second question to you is similar to what my colleague just asked in his first questions to all of you. You have no experience in the Federal court. What experience do you have that qualifies you for a Federal judgeship? How do you plan to make the transition?

Judge Ross. Senator, I have had a broad range of experience. I started out handling all criminal cases in the prosecuting attorney's office, and I did that for 11 years, became the chief trial attorney, handled a broad range of criminal cases.

As county counselor, which I was for 9 years, I supervised all the civil litigation for county government. Some of that litigation was, in fact, Federal litigation. I made these transitions and then made the transition to becoming a judge. I think all of those things would assist me in making the transition if I am fortunate enough to be confirmed.

Senator Grassley. Okay. And my last question, you do not have to answer if you do not want to, but I want to give you a chance to respond to an allegation. On December 6, 2010, Congressman Clay wrote to President Obama and expressed his strong opposition to your nomination based on how you had handled the case Kevin Buchek v. Robert Edwards. Specifically, Congressman Clay urged the President to withdraw your nomination "[b]ased on Judge Ross' judicial activism, history of racial and gender discrimination against black elected officials and employees of the fire district." In his letter to the President, Congressman Clay attached a letter from a group of elected officials in Missouri opposing your nomina-

Judge Ross. Thank you, Senator. I appreciate the opportunity to address that.

I think that the letter that was written to Congressman Clay by the other officials contains significant inaccuracies. This case actually came to our court based on a citizens' petition that was filed by residents of a fire district in North St. Louis County. It was filed after the Missouri Attorney General had filed a lawsuit against the district alleging that they had violated the open meetings laws. There was also a scathing audit issued by the Missouri State auditor citing financial improprieties and a lack of financial controls by the district.

The citizens group requested a temporary restraining order and asked that a receivership be appointed to take over the running of the district. The case went to another judge, and that judge granted the restraining order. It then went to a second judge, who denied a motion to dissolve the restraining order.

When both of those judges were disqualified, the case then was assigned to my division. I did have a hearing, and after a hearing I determined that a preliminary injunction was appropriate. I denied the request for a receivership which would take over the entire operation of the district. I did appoint a special master. The special master that I appointed was a retired Missouri court of appeals judge who happens to be African American. For 14 months, the special master acted, and I affirmed many of the special mas-

ter's recommendations.

To give you an idea of what was happening in the district, they were holding meetings in violation to open meetings laws, and at one point one member of the district voted to pay the former fire chief and an attorney over \$700,000 in severance pay. The attorney, who was going to get a portion of that money, was one of the people who wrote the letter to Congressman Clay.

So I think that the letter contains significant inaccuracies, and at the conclusion of the 14 months that the court was involved in the district, all of the recommendations of the State auditor's office were implemented, and there were financial controls in place and a financial budget where the district was not spending more money

than it was bringing in.

I would also point out that during the course of the court's involvement, another court removed the chairman of the board of the fire district, and it then came to me to appoint the new chairman of the fire standard, and I appointed an African-American male, and in so doing I maintained an African-American majority on the board.

So I believe that the letter contains some inaccuracies that were conveyed to the Congressman.

Senator GRASSLEY. Okay. Now, Mr. Cain, if I only ask you one question, you are going to think I think you are less significant than the other four.

Judge CAIN. I will not be offended, Senator.

[Laughter.]

Senator GRASSLEY. Along the lines of something that the Chairman asked you, you have little experience in Federal court. What experience do you have that qualifies you for a Federal judgeship? And how do you plan to make the transition?

Judge CAIN. Thank you for the question, Senator. Again, as a State court judge for over 11 years, I have used the South Carolina Rules of Civil Procedure and the South Carolina Rules of Evidence in conducting hearings and trials. Those rules are modeled after the Federal rules.

In addition to that, I have heard many types of matters in family court relating to marital estates that might involve such assets as interest in limited liability companies, corporations of various types.

I have also had criminal experience hearing juvenile cases with folks charged with felonies and misdemeanors. And prior to my service on the family court bench, I was in practice for about 14 years and have worked as a public defender and a prosecutor and was county attorney for 7 years and represented clients before various Federal agencies, and clients in primarily State court but also Federal court as well. So I believe I would be able to make the transition successfully if I am fortunate enough to be confirmed.

Thank you.

Senator GRASSLEY. Thanks to all of you, and thank you, Mr. Chairman.

Senator COONS. Thank you very much, Senator Grassley. Do you have any further questions?

Senator Grassley. No.

Senator COONS. I do not either, so we will hold the record of this nomination hearing open for a week in the event that any members of this Committee who were not able to join us today wish to submit additional questions to our five nominees.

I want to personally thank our five nominees for being here today and congratulate them on their nominations. You are truly qualified. You are dedicated public servants, and I am grateful for your willingness to step up and continue your service to our Nation through service on the Federal bench.

This Committee stands in recess.

[Whereupon, at 4 p.m., the Committee was adjourned.] Questions and answers and submissions follow.]

QUESTIONS AND ANSWERS

Responses of Nannette Jolivette Brown
Nominee to be United States District Judge for the Eastern District of Louisiana
to the Written Questions of Senator Chuck Grassley

- 1. At your hearing I asked you what you meant when you said environmental racism is "just another symptom [of general racism]...we're not going to get environmental justice in this country until we get full social and economic justice." Gyan, Joe Jr., "Environmental Racism" Global, Experts Believe, The Advocate, July 31, 2002. At your hearing, it was unclear whether or not you believed you made this statement.
 - a. At your hearing you declined to answer how you defined the term 'environmental justice.' You talked about how other organizations use the term, but I still would like for you to provide your definition. Please respond.

Response: When I have written about the term "environmental justice," I have referred to the concept as articulated in Executive Order 12898, dated February 11, 1994, entitled, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, executed by President William J. Clinton. See, Diversity Refined: Access to Justice: The Many Faces of Environmental Justice: Which One Speaks the Truth?, 56 La. B. J. 420, Apr./May 2009. The Order states in pertinent part, "To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands."

If I am confirmed as a district court judge, I would faithfully follow the precedence of the Supreme Court and the Court of Appeals for the Fifth Circuit regarding matters involving environmental law.

b. Is the above quote correctly attributed to you? At your hearing you were ambiguous about whether or not it was your statement. Please give me a clear answer as to whether or not you made the statemet.

Response: I apologize if I was not clear; however, I do not recall if I made that statement. I do not believe I attended the panel during the International Association of Official Human Rights Agencies' annual meeting that was the subject of Mr. Gyan's article, and while I may have been interviewed as part of his reporting, the term "environmental racism" is not one which I use or of which I have a clear understanding. Indeed, the phrase "environmental racism" itself is not directly attributable to me, and neither was the phrase "of racism in general."

However, I am aware that it is often used interchangeably with the term "environmental justice," and that may have been the reporter's intent. As noted in I(a), my understanding of "environmental justice" is as it is described in Executive Order 12898, and addresses the "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations," and which can also be addressed through improving the social and economic conditions of these populations.

c. Your answer to my question as to what was meant by the above statement during the hearing was a bit unclear. If you made the statement, what did you mean by it?

Response: Please see above.

d. Do you believe that "environmental racism" exists?

Response: Please scc above.

e. If so, please explain fully what you mean by the term?

Response: Please see above.

- At your hearing I asked the following question, which you declined to answer. I
 am asking the question again, and would like you to respond in the context of
 explaining your writings, not how you would rule as a judge, if confirmed.
 - a. Do you believe economic considerations, such as increased job opportunities for residents, should be taken into account in litigation that seeks to prevent an "undesirable" industry from being located in a poor community?

Response: No; not unless specifically directed to do so by statute or Supreme Court or Appellate Court precedent.

- 3. Over the years, environmental groups have sought to use the courts as way to impose regulations of greenhouse gases. For example, in Massachusetts v. Environmental Protection Agency, several states challenged the Environmental Protection Agency's decision not to regulate greenhouse gases. Recently, the Supreme Court heard oral arguments in American Electric Power Co. v. Connecticut, in which several states and private parties seek emissions caps on utilities for their alleged contribution to global climate change. These cases have contributed to concerns that the Judiciary is overstepping its bounds by intruding on the policy-making authority of the legislative and executive branches.
 - a. Do you believe these concerns are valid? Why or why not?

Response: As a district court judge my beliefs would be irrelevant and inapplicable. Should I be confirmed, I will apply the applicable precedent to the facts before me and only consider the issues properly before me. Considering that in general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit, if I am confirmed, I am committed to following the precedents of higher courts faithfully and giving them full force and effect, including those mentioned above.

b. Do you agree that some issues, no matter how pressing or critical one may view them to be, are outside the purview of the courts?

Response: Yes.

4. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is integrity, in my opinion, because integrity implies honesty, fairness, ethics and a commitment to adhere to the principles they are sworn to uphold. I believe I possess these attributes.

5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: In general, I believe a judge should demonstrate calm, even temperament. Temperament, as I apply it here, describes a manner of thinking, behaving and reacting. A judge's thinking should be clear, informed, objective and impartial. A judge should behave in a way that is professional, respectful and he or she should treat all litigants and participants, as well as his or her staff and court staff in general, with respect and dignity and always be prepared. Finally, a judge should preside in a manner that is calm, measured and even tempered. I believe I meet this standard.

6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In a case of first impression, where there is no controlling precedent that dispositively concluded an issue with which I was presented, I would first examine the facts of the case in accordance with the Constitution and any statute that could in any way reflect on the issue of first impression. I would also look at prior rulings of the Supreme Court and Appellate Courts to see if analogies could be made from those cases to the case of first impression.

8. At your hearing, you were asked about the use of precedent and the role of courts in interpreting laws. You mentioned factors you would use. Is it ever appropriate for a judge to use foreign law in determining the meaning or application of U.S. law?

Response: No.

9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: I would apply the decision of the Supreme Court or the Court of Appeals and not use my own judgment of the merits.

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: When Congress exceeds its authority, it is appropriate for federal courts to strike down an act of Congress.

11. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would manage my caseload by utilizing a scheduling order system to keep all of the cases before me on track to be resolved in a timely manner. I would also utilize the alternative resolution processes incorporated into the Eastern District of Louisiana's scheduling orders, such as mediation before trial and encourage the parties to get together early in the litigation to mediate, resolve or climinate issues they can compromise on early.

12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, I would take the following steps to control my docket: As mentioned above, I would utilize a scheduling order system to keep all of the cases before me on track to be resolved in a timely manner; I would be prepared to rule, where appropriate, on all matters when scheduled to do so, whether oral argument is granted or not; I would adhere to a daily schedule beginning all matters on time and moving matters

along with respect to all parties interests. I would make myself available for status conferences and even sehedule status conferences regularly in cases that are particularly adversarial, to offer assistance to parties who find themselves bogged down with procedural or scheduling disputes that prevent the progress of the litigation.

13. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on the evening of May 11, 2011. I prepared responses on May 12, 2011. I consulted with representatives of the Department of Justice regarding my responses, and then finalized them before authorizing their transmittal to the Committee.

14. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Nannette Jolivette Brown Nominee to be United States District Judge for the Eastern District of Louisiana to the Written Questions Senator Amy Klobuchar

1. If you had to describe it, how would you characterize your judicial philosophy – and how do you see the role of the judge in our constitutional system?

Response: I would characterize my judicial philosophy and the role of the judge in our constitutional system as founded on three principals: stability, predictability and civility. To that end, if confirmed, I would listen to every party fairly and objectively and treat them with respect and dignity; decide only the issues properly before me; adhere to the rule of law and precedence; and preside over every matter with calm, even temperament.

2. As the one undemocratic branch, the courts have a special responsibility to make sure they are available to those Americans most in need of the courts to protect their rights. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?

Response: If confirmed, I will be bound by precedent. I will treat everyone appearing before me with dignity, respect and objectivity and only decide issues properly before me and preside over every case with calm, even temperament. As evidence of my ability to be fair and objective, and my commitment to the rule of law, I have been an advocate at different times in my career, for widely different interests. I have represented people with differing political beliefs and from varying walks of life. I have always provided an unwavering commitment to my clients' interests whether their positions were popular or not, and despite opposite public opinion or political pressure to do otherwise, in some instances.

3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

Response: I believe judges should be strongly bound to the doctrine of stare decisis. The commitment to stare decisis should not vary depending on the court because this principle is intended to provide predictability, stability and well-reasoned opinions within our judicial system.

Responses of Timothy M. Cain Nominee to be United States District Judge for the District of South Carolina to the Written Questions of Senator Chuck Grassley

1. In *Price v. Turner*, the defendant-father owed approximately \$6,000 in child support. You found he was in willful contempt of court, and sentenced him to 12 months in prison. The defendant-father was not represented by counsel at that civil contempt hearing. Your decision was affirmed by the South Carolina Supreme Court, and is currently pending before the Supreme Court of the United States. Opponents of your position argue that an indigent litigant has a constitutional right to counsel in civil proceedings if he is facing incarceration. Why, in your view, should courts not extend the right of counsel in these cases?

Response: The issue of appointment of counsel for the Defendant was not raised before me at the contempt hearing, which was conducted utilizing the same procedure employed by all family courts in South Carolina in conducting hundreds of such hearings each week. Although the Defendant secured counsel shortly after the hearing, no motion for reconsideration or other post-hearing motion was made to present this issue to me. The Defendant raised the issue for the first time on appeal.

The opinion of the South Carolina Supreme Court, which affirmed my ruling, stated that the sentence was permitted by South Carolina statute and that the result was consistent with controlling precedent. In the event the Supreme Court of the United States rules that the right to appointed counsel should be extended in such cases, I will be bound by and follow such precedent.

2. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is adherence to the rule of law and its equal application to all parties. I believe that my work as a state court judge for more than eleven years demonstrates that I possess this attribute.

3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should be patient, courteous and respectful to all parties and give careful attention to the issues before the court. I believe my work as a state court judge reflects that I meet this standard.

4. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

5. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: I would consider the opinions of the Supreme Court of the United States and the Fourth Circuit Court of Appeals. In the event there was no controlling precedent from those courts, I would look to opinions of the federal appellate courts in other circuits. If the matter involved a case of first impression, in the absence of controlling or persuasive authority, I would look to the text of the applicable constitutional or statutory provision and construe the words in accordance with the plain and ordinary meaning.

6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: I would be bound by and follow the precedents of the Fourth Circuit Court of Appeals and United States Supreme Court.

7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: It is appropriate for a federal court to declare a statute enacted by Congress unconstitutional if Congress, in enacting the statue, has exceeded the authority granted by the Constitution or enacted a statute which is in conflict with the Constitution.

8. At your hearing, you were asked about the use of precedent and the role of courts in interpreting laws. You mentioned factors you would use. Is it ever appropriate for a judge to use foreign law in determining the meaning or application of U.S. law?

Response: It would not be appropriate to use foreign law to determine the meaning or application of U.S. law unless directed by the Constitution, U.S. statutes or binding precedent established by the United States Supreme Court or Fourth Circuit Court of Appeals.

9. Of what value is legislative report language or floor debate in attempting to determine legislative intent of statutory language?

Response: When a statute is clear and unambiguous, the court should look to the plain language contained in the text, and controlling precedent of the United States Supreme Court and the Court of Appeals. If a statute is ambiguous, the sources referenced in the question could be utilized to develop insight into the process which brought about the enactment of the statute.

10. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: I would work closely with the Bar, Clerk of Court staff and U.S. Magistrate Court Judges and utilize a case management system which would track the progress of cases assigned to me for disposition. Deadlines for completion of pre-trial, discovery and procedural issues would be established so as to minimize delay.

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: I believe that judges do have an important role in controlling the pace and conduct of litigation. If confirmed, I would utilize a case management system as described in the answer to Question 10. In addition, I would schedule and conduct pretrial status conferences to assure that discovery issues and other procedural matters are appropriately addressed in a timely manner so as to put cases in a posture for trial. I would also encourage the use of alternative dispute resolution such as mediation to resolve cases and narrow the issues to be decided by the court, and consult the learned judges in my district as to successful strategies to maximize the efficient use of court time and personnel.

12. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on May 11, 2011, and prepared my answers. I discussed my responses with a representative of the Department of Justice and after finalizing the same, authorized transmission to the Senate Judiciary Committee.

13. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Timothy M. Cain Nominee to be United States District Judge for the District of South Carolina to the Written Questions Senator Amy Klobuchar

1. If you had to describe it, how would you characterize your judicial philosophy – and how do you see the role of the judge in our constitutional system?

Response: My judicial philosophy is that all parties should be treated equally under the law, regardless of station in life. A judge should be a fair and impartial arbiter of disputes brought before the court, and faithfully adhere to the rule of law. Judges should apply the law to a particular set of facts.

2. As the one undemocratic branch, the courts have a special responsibility to make sure they are available to those Americans most in need of the courts to protect their rights. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?

Response: All parties are entitled to equal access to justice regardless of their social or economic status. I believe that my record as a state court judge for over cleven years demonstrates my commitment to equal access to justice for all. If confirmed, I pledge to continue this commitment, and to treat all parties fairly, affording each a full and fair opportunity to be heard, in accordance with the provisions of applicable law.

3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

Response: Judges should adhere to the doctrine of stare decisis and follow established and controlling precedent. The principle that like cases should be decided in like manner, and the commitment to stare decisis, should apply to all judges.

Responses of William F. Kuntz, II Nominee to be United States District Judge for the Eastern District of New York to the Written Questions of Senator Chuck Grassley

1. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is possession of a firm commitment to the rule of law and the consistent due administration of justice. The judge must embody the integrity of the judicial system by the systematic application of the applicable law to the facts of the case before the court. That administration of justice must be exercised in a manner thoughtful, respectful, fair and impartial to all counsel and to all parties. Patience and courtesy must always be preserved to ensure the dignity of the proceedings. I believe I possess that attribute.

2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: The most important elements of judicial temperament are, first and foremost, that any judge be consistently respectful, modest, fair, courteous, patient, impartial, objective, evenhanded and ready, willing and able to rule clearly and decisively. I believe I meet that standard.

3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

4. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: Should I face a case of first impression for which there was no controlling precedent, I would take considerable care to review most thoroughly any and all analogous Supreme Court and Circuit Court rulings. I would also review all constitutional and all statutory provisions that might arguably bear on the issue. I would also exercise my discretion and authority narrowly and with the greatest restraint, and would only decide those issues that necessarily require resolution.

5. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: I understand and recognize that as a District Court Judge I would be bound by the precedents of the higher courts. I would therefore apply the decision of the Supreme Court or of the Court of Appeals.

6. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: A federal court should declare a statute enacted by Congress unconstitutional when Congress has exceeded its constitutional authority or enacted a statute in contravention of a constitutional provision. Therefore, I would be guided by and systematically follow the precedents of the higher courts, including the Supreme Court and the Court of Appeals for the Second Circuit.

7. At your hearing, you were asked about the use of precedent and the role of courts in interpreting laws. You mentioned factors you would use. Is it ever appropriate for a judge to use foreign law in determining the meaning or application of U.S. law?

Response: No.

8. Of what value is legislative report language or floor debate in attempting to determine legislative intent of statutory language?

Response: The Supreme Court has ruled that when a statute is clear and unambiguous on its face the text controls and there is no need to resort to a review of legislative intent.

9. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: In consultation with counsel for all parties to the action I would set firm and reasonable deadlines for motions and pretrial discovery. I would enforce those deadlines most firmly. I would determine pretrial motions expeditiously. I would encourage settlement and support the use of mediation. I would rely on the uniformly excellent magistrate judges of the Eastern District of New York to handle appropriate aspects of cases assigned to me, consistent with their statutory authority. I would establish firm trial dates and preside over trials with efficiency. I would learn about and deploy the best practices of more experienced Eastern District Judges in managing my caseload efficiently.

10. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket? Response: Yes. Judges have a crucial role in controlling the pace and the conduct of litigation. Judges must ensure the due administration of justice by the prompt resolution of disputes without undue expense. Please see my response to question 9 with respect to those specific steps I would undertake to control my docket if confirmed.

11. Please describe with particularity the process by which these questions were answered.

Response: I prepared my responses after receiving these questions on May 11, 2011.

1 then reviewed my responses with representatives of the Department of Justice, after which I finalized my responses. I then authorized their transmittal to the Committee.

12. Do these answers reflect your true and personal views?

Response: Yes.

Responses of William F. Kuntz II Nominee to be United States District Judge for the Eastern District of New York to the Written Questions of Senator Amy Klobuchar

 If you had to describe it, how would you characterize your judicial philosophy – and how do you see the role of the judge in our constitutional system?

Response: If I had to describe it, I would characterize my judicial philosophy as one traditional for a United States District Court Judge: of applying the law to the facts of the particular case and controversy before the Court. I see the role of the District Court Judge as applying the law to the facts of the case before the Court with patience, humility and respect for the litigants and their counsel.

2. As the one undemocratic branch, the courts have a special responsibility to make sure they are available to those Americans most in need of the courts to protect their rights. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?

Response: I believe that equal justice under law is the paramount value of our judiciary. All persons stand equal before the law. In my twenty three years (23) as a Commissioner on the Civilian Complaint Review Board of the City of New York, I applied the law to the facts of each case without fear or favor. In my tenure as a member of the Board of Trustees of the Legal Aid Society of New York and the Lawyers' Committee for Civil Rights Under Law I have worked with leading lawyers and jurists to ensure equal access to justice for all, regardless of political beliefs, socio-conomic status, or whether they were defendants or plaintiffs. I would ensure that same access and just treatment in my courtroom were I fortunate enough to be confirmed as a United States District Court Judge.

3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

Response: I believe that District Court Judges are most strongly bound to follow the precedent established by the United States Supreme Court and the Court of Appeals. In my case, as a District Court Judge in the Eastern District of New York, should I be fortunate enough to be confirmed I would follow the precedents of the United States Supreme Court and the Court of Appeals for the Second Circuit. The commitment to stare decisis does not vary depending on the court: that commitment applies to all courts.

Responses of John A. Ross Nominee to be United States District Judge for the Eastern District of Missouri to the Written Questions of Senator Chuck Grassley

1. Under United States v. Booker, the Federal Sentencing Guidelines are advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?

Response: I would give great deference to the Federal Scntencing Guidelines. I believe uniformity and consistency are important considerations for a fair system of sentencing.

2. Under what circumstances would you be will to depart from the Guidelines?

Response: I would consider the sentencing range set forth in the Sentencing Guidelines and any applicable provisions for upward or downward departures. I would then consider all of the sentencing factors in the Sentencing Reform Act (SRA), 18 U.S.C. § 3553(a). After those considerations, I would depart from the Guidelines only if such departure was supported by the facts of the case and the law.

3. What is the most important attribute of a judge, and do you possess it?

Response: I believe the most important attribute of a judge is to be fair and impartial, by exhibiting a willingness to listen and an ability to keep an open mind, by treating all litigants respectfully, and by providing a full and fair opportunity to be heard. I believe I possess that attribute.

4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: I believe the appropriate temperament for a judge is to be patient and respectful while maintaining control of the proceedings to ensure the fair administration of justice. I believe I meet that standard.

5. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: If confirmed as a District Judge, I would follow the precedents of the Supreme Court and the Eighth Circuit Court of Appeals.

At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In a case of first impression, I would look to analogous Supreme Court and Eighth Circuit cases. If there were no such cases, I would then look to other federal precedent. I would also review all relevant constitutional and statutory provisions that may address the issue. In matters of statutory interpretation, I would look to the plain language of the statute. If the statutory language is unclear, I would then consider the legislative history of the statute.

7. At your hearing, you were asked about the use of precedent and the role of courts in interpreting laws. You mentioned factors you would use. Is it ever appropriate for a judge to use foreign law in determining the meaning or application of U.S. law?

Response: The only circumstance where it would be appropriate for a District Judge to use foreign law to determine the meaning or application of U.S. law is if specifically directed to do so by precedent of the Supreme Court or Court of Appeals.

8. Of what value is legislative report language or floor debate in attempting to determine legislative intent of statutory language?

Response: While legislative report language or floor debate may have some value if a statute is ambiguous or vague, the determination of legislative intent is not generally necessary when the plain language of the statute is clear.

9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: If confirmed as a District Judge, I would not substitute my opinion or judgment for the established case law.

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Under limited circumstances, it may be appropriate to declare a statute unconstitutional if it violates the plain language of the Constitution of if Congress has clearly exceeded its authority under the Constitution.

11. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I intend to manage my caseload by early involvement with the parties to identify and resolve issues. After consulting the attorneys, I will set firm yet reasonable expectations for the parties and establish a clear schedule for discovery, motions and trial settings. I will enforce reasonable deadlines and promptly rule on

motions. I will monitor my caseload through regular status conferences. I will also encourage settlement and the use of mediation where appropriate.

12. At your hearing, you stated you "fully believe that everyone is entitled to a full and fair day in court." While I respect the message I think you were trying to send, I want to ask you if this is an absolute assertion. Is there an appropriate use for summary judgment? Do those who file frivolous law suits deserve a full and fair day in court? What about prisoner post-conviction petitions?

Response: A full and fair day in court may have a different meaning in different cases. There are certain cases, including some frivolous lawsuits and some prisoner post-conviction petitions, which can be finally resolved through pre-trial motions such as summary judgment.

13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: 1 believe a judge has a significant role in controlling the pace and conduct of litigation. If confirmed as a District Judge, I would consult with the attorneys at a very early stage and, giving consideration to the complexity of the case, establish a schedule with clear deadlines. I would continue during the pendency of the case to work with the attorneys and monitor the progress of the case.

14. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on May 11, 2011, and after careful consideration, I prepared my responses on May 12, 2011. I then reviewed my responses with representatives of the Department of Justice, finalized my responses, and authorized their transmittal to the Committee.

15. Do these answers reflect your true and personal views?

Response: Yes.

Responses of John A. Ross Nominee to be United States District Judge for the Eastern District of Missouri to the Written Questions Senator Amy Klobuchar

1. If you had to describe it, how would you characterize your judicial philosophy – and how do you see the role of the judge in our constitutional system?

Response: My judicial philosophy is to treat everyone appearing in court equally and respectfully while providing a fair and impartial opportunity to be heard. I believe the role of a judge in our constitutional system is to resolve disputes by carefully and thoughtfully applying the law to the facts of each case.

2. As the one undemocratic branch, the courts have a special responsibility to make sure they are available to those Americans most in need of the courts to protect their rights. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?

Response: Having handled thousands of cases over the past eleven years as a circuit judge in the busiest circuit in the State of Missouri, I have always treated those who come before the court equally and respectfully, in accordance with my judicial philosophy. If confirmed, I will continue to perform the duties of my judicial office impartially and diligently, ensuring that every litigant in my court is provided with a fair and impartial opportunity to be heard.

3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

Response: If confirmed as a District Judge, I would follow the binding precedents of the higher courts, including the Supreme Court and the Eighth Circuit Court of Appeals. I have not considered how a higher court might regard the doctrine of stare decisis.

Responses of Nancy Torresen Nominee to be United States District Judge for the District of Maine to the Written Questions of Senator Chuck Grassley

- 1. Congress passed the Partial-Birth Abortion Ban Act in 2003, and the Supreme Court held this statute did not violate the Constitution in 2007 in Gonzales v. Carhart. Kansas has passed a late-term abortion law that bars abortions at 22 weeks gestation, or generally 20 weeks after conception, except under circumstances where it is necessary to save the life of the mother. Kansas argues that it has a legitimate interest in protecting the unborn by 20 weeks because they react to stimuli that would be recognized as painful if applied to an adult. Idaho and Oklahoma have passed similar legislation.
 - a. Do you believe that the Kansas law is consistent with the Supreme Court's decision in *Planned Parenthood v. Casey*, where the Court said that abortion restrictions cannot pose an "undue burden"?

Response: I have not studied the Kansas law or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) and *Gonzales v. Carhart*, 550 U.S. 124 (2007), both of which are lengthy cases with plurality opinions. I understand that the prevailing analysis as summarized in *Casey* and affirmed in *Carhart* is whether the state statute constitutes an "undue burden" on a woman's right to a pre-viability abortion. *Casey*, 505 U.S. at 846; *Carhart*, 550 U.S. at 145. This area of the law also requires an understanding of complex medical issues and technological advances which may be relevant to the analysis by the Supreme Court of whether abortion restrictions impose an "undue burden." If confirmed, I would work diligently to understand this complicated area where medicine and law converge, and I would faithfully apply the existing precedents of the United States Supreme Court and the United States Court of Appeals for the First Circuit on any issues to come before me.

b. Given your interest in women's health issues, do you believe that states have a legitimate interest in regulating or restricting women's access to abortions when the unborn feel pain?

Response: The Supreme Court has reaffirmed in *Planned Parenthood v. Casey* and in *Carhart* that the states have "legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child." *Casey*, 505 U.S. at 846; *Carhart*, 550 U.S. at 145. I have not studied this issue sufficiently to form an opinion on whether or how fetal pain would affect the issue of restricting a woman's access to abortion. If such an issue arose, I would faithfully apply the precedents established by the United States Supreme Court and the United States Court of Appeals for the First Circuit to the facts as developed in the case before me.

2. At your hearing, I asked about the Mabel Wadsworth Women's Health Center. In 2009, the Center held a vigil for Dr. George Tiller. You indicated you were not familiar with the incident. Would you please review any calendar, notes, or other materials to confirm your lack of involvement with any vigil or statement from the Center? Please report back to me with the results of your review.

Response: I have reviewed my calendar and my notes and materials from 2009 relating to my involvement at the Mabel Wadsworth Women's Health Center. I can confirm that I was not involved in the planning of a vigil by the Mabel Wadsworth Women's Health Center. I did not attend any vigil for Dr. Tiller. I was also not involved in the preparation of any statements released by the Mabel Wadsworth Women's Health Center relating to Dr. Tiller's death.

3. In your career as an Assistant United States Attorney, you briefed a number of habeas corpus cases. Considering your experience with the case law surrounded these petitions, do you agree with the Supreme Court's *Boumediene* decision (which extended the reach of American civilian law and the Writ of Habeas Corpus to cover foreign-citizen enemy combatant terrorists apprehended abroad and held at Guantanamo Bay)? Why or why not?

Response: The habeas corpus cases which I briefed all involved United States citizens convicted of crimes in the State of Maine. My experience does not extend to the area of foreign citizen enemy combatant terrorists apprehended abroad and held at Guantanamo Bay.

a. How would you reconcile *Boumediene* with *Johnson v. Eisentrager*, which – according to Justice Scalia's dissent – "held beyond any doubt that the Constitution does not ensure habeas for aliens held hy the United States in areas over which our Government is not sovereign"?

Response: The majority opinion in Boumediene v. Bush, 553 U.S. 723, 762 (2008), acknowledged that the enemy aliens in Johnson v. Eisentrager, 339 U.S. 763 (1950) were denied access to the writ of habeas corpus and quoted the Eisentrager Court's statement that "at no relevant time were [the enemy aliens] within any territory over which the United States is sovereign and [that] the scenes of their offense, their capture, their trial and their punishment were all beyond the territorial jurisdiction of any court of the United States." Boumediene, 553 U.S. at 762 (quoting Eisentrager, 339 U.S. at 778). The Boumediene majority then proceeded to distinguish Eisentrager, and it ultimately concluded that aliens detained as enemy combatants at Guantanamo Bay were entitled to use the writ of habeas corpus to challenge the legality of their detention. Boumediene is now the controlling authority on the issue of whether the writ is available to aliens detained as enemy combatants at Guantanamo Bay. I have no personal views on this issue. I will faithfully apply any existing precedents from the United States Supreme Court and the United States Court of Appeals for the First Circuit.

4. What is the most important attribute of a judge, and do you possess it?

Response: In my view, the most important attribute of a judge is impartiality. A judge needs to be able to approach every case with an open mind, treat the parties even-handedly, consider the evidence fairly, and diligently apply the law to the case at hand. I believe that I possess these attributes.

5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judicial temperament is a blend of qualities which are well spelled out in Canon 3 of the Code of Conduct for United States Judges. "A judge should be patient, dignified, respectful and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity." I believe I have the appropriate temperament to be a judge.

6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In a matter of first impression, I would focus first on the plain meaning of any text I was called upon to construe. If that were ambiguous, I would look to the legislature's purpose. I would look for analogous law within the Court of Appeals for the First Circuit or the United States Supreme Court for guidance in deciding the case. Finally, I would consider cases from other Circuit or District Courts that might have already dealt with the issue.

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: I would apply the decision of the Supreme Court or the Court of Appeals for the First Circuit regardless of whether I personally agree with the decision.

9. At your hearing, you were asked about the use of precedent and the role of courts in interpreting laws. You mentioned factors you would use. Is it ever appropriate for a judge to use foreign law in determining the meaning or application of U.S. law?

Response: I cannot envision an instance where it would be appropriate to rely on foreign law to determine the meaning or application of U.S. law.

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: A federal court should strike down a statute as unconstitutional only where it clearly violates the United States Constitution or where Congress has exceeded its Constitutional boundaries. General canons of construction set forth by the United States Supreme Court should be followed before any determination of unconstitutionality is made.

11. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would coordinate with the Chief Judge in my district. I would take advantage of the weekly reports and the case management software used in my District to keep on top of the cases assigned to me. I have found, throughout my career, that most challenges can be met by hard work and perseverance.

12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: I believe that judges play an important role in controlling the pace and conduct of litigation. If confirmed, I would follow the practice in the District of Maine of issuing scheduling orders in civil cases and discovery orders in criminal cases to notify the parties of the expectations and deadlines for every case.

Please describe with particularity the process by which these questions were answered.

Response: I received these questions on May 11, 2011. I drafted my answers and asked the U.S. Department of Justice to submit them on my behalf.

14. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Nancy Torresen Nominee to be United States District Judge for the District of Maine to the Written Questions Senator Amy Klobuchar

1. If you had to describe it, how would you characterize your judicial philosophy – and how do you see the role of the judge in our constitutional system?

Response: My view of a judge's role and my judicial philosophy are essentially the same thing. The federal district court judge has the job of approaching every case with an open mind. The judge must listen carefully to the parties, find any relevant facts if acting as the factfinder, and apply the law as it has been set forth either by statute, the United States Constitution, or in caselaw from the United States Supreme Court or the United States Court of Appeals.

2. As the one undemocratic branch, the courts have a special responsibility to make sure they are available to those Americans most in need of the courts to protect their rights. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political heliefs or whether they are rich or poor, defendant or plaintiff?

Response: In my view, the most important attribute of a judge is impartiality. A judge needs to be able to approach every case with an open mind, treat the parties evenhandedly, consider the evidence fairly, and diligently apply the law to the case at hand. I believe that I possess these attributes.

3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

Response: Federal district court judges are absolutely bound by the doctrine of stare decisis. The job of the federal judge is to apply the law as it has been set forth in the Constitution, in statutes or in legal precedents. I have the utmost respect for the rule of law and for the predictability and stability which comes from following precedent. Stare decisis is an important principle for all levels of the federal bench, but it is particularly important for federal district court judges. Federal district court judges should not be policy makers.

SUBMISSIONS FOR THE RECORD

Per RECORD Defending Liberty
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AMERICAN BAR ASSOCIATION Standing Committee on

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Standing Committee on the Federal Judiciary 740 Fifteenth Street, NW Washington, DC 20005-1022 Facsimile: (202) 662-1762

VIA EMAIL AND FIRST CLASS MAIL

March 3, 2011

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, DC 20510

> Re: Nomination of Nanette Jolivette Brown To the United States District Court for the Eastern District of Louisiana

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Nanette Jolivette Brown who has been nominated for a position on the United States District Court for the Eastern District of Louisiana. As a result of our investigation, the Committee is of the unanimous opinion that Ms. Brown is "Qualified" for the position.

A copy of this letter has been provided to Nanette Jolivette Brown.

Sincerely,

Benjamin H. Hill, III

Chair

Nanette Jolivette Brown
The Honorable Robert F. Bauer
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

March 3, 2011 Page 2

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on March 3, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman

Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon., Charles E. Grassley, Ranking Member

Hon. Orrin G. Hatch Hon. Jeff Sessions Hon. Jon Kyl

Hon. Lindsey O. Graham Hon. John Comyn Hon. Mike Lee Hon. Tom Coburn



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VIA EMAIL AND FIRST CLASS MAIL

February 17, 2011

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, DC 20510

> Nomination of Timothy Martin Cain To the United States District Court Re: for the District of South Carolina

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Timothy Martin Cain who has been nominated for a position on the United States District Court for the District of South Carolina. As a result of our investigation, the Committee is of the unanimous opinion that Judge Cain is "Qualified" for the position.

A copy of this letter has been provided to Timothy Martin Cain.

Sincerely,

Benjamin H. Hill, III

Chair

Timothy Martin Cain The Honorable Robert F. Bauer Michael Zubrensky, Esq. (via email) ABA Standing Committee on the Federal Judiciary (via email) Denise A. Cardman, Esq. (via email)

February 17, 2011 Page 2

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 (via email) on February 17, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman

Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
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Minority:

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Hon. Lindsey O. Graham Hon. John Cornyn Hon. Mike Lee Hon. Tom Coburn



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VIA EMAIL AND FIRST CLASS MAIL

March 10, 2011

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate
224 Dirksen Senate Office Building Washington, DC 20510

> Re: Nomination of William Francis Kuntz, II To the United States District Court for the Eastern District of New York

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of William Francis Kuntz, II who has been nominated for a position on the United States District Court for the Eastern District of New York. As a result of our investigation, the Committee is of the unanimous opinion that Mr. Kuntz is "Well Qualified" for the position.

A copy of this letter has been provided to William Francis Kuntz, II.

Sincerely,

Benjamin H. Hill, III Chair

William Francis Kuntz, II The Honorable Robert F. Bauer Michael Zubrensky, Esq. (via email) ABA Standing Committee on the Federal Judiciary (via email) Denise A. Cardman, Esq. (via email) March 10, 2011 Page 2

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on March 10, 2011.

Majority: Hon. Patrick J. Leahy, Chairman

Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon., Charles E. Grassley, Ranking Member

Hon. Orrin G. Hatch Hon. Jeff Sessions Hon. Jon Kyl

Hon. Lindsey O. Graham Hon. John Cornyn Hon. Mike Lee Hon. Tom Coburn



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SEVENTH CIRCUIT Stephan Landsman 25 East Jackson Boulevard Chicago, IL 60604

Chicago, IL obbol BICHTH CIRCUIT David L. Brown Bith Floor Fleming Bulding 218 Sixth Avenue Moines, IA, 50309-4013 NINTH CIRCUIT Joanne M. Carvey 17th Floor 4 Embarcatiero Center cisco, CA 94111-4158 Alan Van Eten

Alan Van Ellen Suite 770 Pauahi Tower 1003 Bishop Street Honolulu, HI 96813

TENTH CIRCUIT Paul T. Moxley 11th Floor 111 East Broadway Salt Lake City, UT 84111-5225

ELEVENTH CIRCUIT Ramón A. Abadin Suire 1208 9153 South Dadeland Boulvard Miami, FL 33156-2739

D.C. CIRCUIT Carolyn H. Williams 725 12* Street, N.W. gon, DC 20005-5901 FEDERAL CIRCUIT Joseph M. Potenza Suite 1200 1100 13* Street, N.W. ngion, DC 2000S-4056

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STAFF COUNSEL Denise A. Cardman 202-662-1761 mand@staff.abaner.org

AMERICAN BAR ASSOCIATION

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the Federal Judiciary 740 Fifteenth Street, NW Washington, DC 20005-1022 Facsimile: (202) 662-1762

VIA EMAIL AND FIRST CLASS MAIL

December 1, 2010

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, DC 20510

> Nomination of John Andrew Ross To the United States District Court Re: for the Eastern District of Missouri

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of John Andrew Ross who has been nominated for a position on the United States District Court for the Eastern District of Missouri. As a result of our investigation, the Committee is of the unanimous opinion that Judge Ross is "WQ" for the position.

A copy of this letter has been provided to John Andrew Ross.

Bu Nother

Benjamin H. Hill, III

John Andrew Ross The Honorable Robert F. Bauer Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)

Denise A. Cardman, Esq. (via email)

December 1, 2010

Page 2

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on December 1, 2010.

Majority:

Hon. Patrick J. Leahy, Chairman

Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Russell D. Feingold
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Benjamin L. Cardin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Edward E. Kaufman
Hon. Arlen Specter
Hon. Al Franken

Minority:

Hon. Jeff Sessions, Ranking Member Hon. Orrin G. Hatch

Hon. Charles E. Grassley Hon. Jon Kyl Hon. Lindsey O. Graham Hon. John Cornyn Hon. Tom Coburn



CHAIR
Benjamin H. Hill, III
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Lisa G. Arrowood
28 State Street
Boston, MA. 02109

SECOND CIRCUIT Beth L. Kaufman 60 East 42nd Street k, NY 10165-0023

THIRD CIRCUIT Robert C. Heim Cira Center 2929 Arch Street Philadelphia, PA 19104-2808

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SEVENTH CIRCUIT Stephan Landsman I Jackson Boulevard Chicago, IL 60604

NINTH CIRCUIT Joanne M. Garvey 17th Floor 4 Embarcadero Center cisco, CA 94111-4158 Alan Van Etten Suite 700 810 Richards Street ulu, HI 96813-4728

TENTH CIRCUIT Paul T. Moxley 11th Floor 111 Fast Broadway San Lake City, UT 84111-5225

ELEVENTH CIRCUIT Ramón A. Abadin Suite 1208 9155 South Oadeland Boulvard Miami, FL 33156-2739

D.C. CIRCUIT Carolyn H. Williams 725 12° Street, N.W. tion, DC 20005-5901 FEDERAL CIRCUIT Joseph M. Potenza Suite 1200 1100 13° Street, N.W. glon, DC 20005-4086

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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary 740 Fifteenth Street, NW Washington, DC 20005-1022 Facsimile: (202) 662-1762

VIA EMAIL AND FIRST CLASS MAIL

March 3, 2011

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, DC 20510

> Re: Nomination of Nancy Torresen To the United States District Court for the District of Maine

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Nancy Torresen who has been nominated for a position on the United States District Court for the District of Maine. As a result of our investigation, the Committee is of the unanimous opinion that Ms. Torresen is "Well Qualified" for the position.

A copy of this letter has been provided to Nancy Torresen.

Sincerely,

Benjamin H. Hill, III Chair

Nancy Torresen

The Honorable Robert F. Bauer Michael Zubrensky, Esq. (via email) ABA Standing Committee on the Federal Judiciary (via email)

Denise A. Cardman, Esq. (via email)

March 3, 2011 Page 2

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on March 3, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman

Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon., Charles E. Grassley, Ranking Member Hon. Orrin G. Hatch

Hon. Orrin G. Hatch Hon. Jeff Sessions Hon. Jon Kyl Hon. Lindsey O. Graham

Hon. Lindsey O. Grahar Hon. John Cornyn Hon. Mike Lee Hon. Tom Coburn



For Immediate Release May 4, 2011 Contact: Kevin Kelley/Liz Johnson 202-224-2523

Statement of
Senator Susan Collins
Nomination of Nancy Torresen for U.S. District Judge for Maine
Committee on the Judiciary
May 4, 2010

Our judicial system, one of the three equal branches of our government, is charged with ensuring equal justice under law, a pillar of our democracy. Whom we appoint to these judicial positions is as important as whom we elect.

Nancy Torresen, the nominee to be the U.S. District Court Judge for Maine, is eminently qualified to be confirmed as U.S. District Judge for Maine. She has led an exemplary career of public service culminating in her current position as Assistant U.S. Attorney.

Ms. Torresen graduated from Hope College with a B.A. cum laude in 1981 and received her J.D. cum laude in 1987 from the University of Michigan Law School. She began her legal professional career in 1987 when she served as a law clerk to the well-respected Maine Judge Conrad Cyr. From 1988 to 1990, she worked at the law firm Williams and Connolly here in Washington.

In 1990, she became an Assistant U.S. Attorney for the District of Maine where she initially handled civil matters involving federal agencies. In 1994, she was assigned to the Appellate Section of the Criminal Division of the Maine Attorney General where she was primarily responsible for representing the State in appeals of serious violent crime convictions. In 2001, Ms. Torresen returned to the U.S. Attorney's Office where she has been responsible for investigating and prosecuting federal crimes in the northern half of Maine.

In conversations with Ms. Torresen, I became convinced of her dedication and passion for the law and appreciated her 21-year long commitment to public service. She has remarked that she is proudest of her criminal prosecution efforts because of the urgent need to protect the public from violent criminals and her desire not to let down the victims of violent crime.

One of her more significant cases was the recent prosecution of the multi-state bank robber dubbed the "burly bandit." From April through July, Robert Ferguson robbed more than 10 banks and credit unions throughout New England. The spree ended with a robbery at the Bangor Savings Bank on July 13, 2010. On October 1, 2010, Mr. Ferguson pleaded guilty in United States District Court in Bangor to 11 counts of bank robbery. Ms. Torresen was recognized by U.S. Attorney Delahanty for her work that was "instrumental in coordinating the prosecution in the six states."

Except for a brief stint in private practice, Ms. Torresen's entire career has been as a dedicated public servant. She is well respected in the legal community and was rated "unanimously well-qualified" by the

American Bar Association. One of her colleagues in the Maine legal community, Tim Woodcock, remarked to me that he views her as "highly professional, extremely capable, tough, but fair and is a strong advocate for the adherence by law enforcement to all legal requirements."

These are all qualities that we should look for in our judicial nominees. I am pleased to say that Ms. Torresen's work as a prosecutor in both the federal and state judicial systems, her integrity, her temperament, and her respect for precedent make her well qualified to serve as Maine's next federal judge. I note too that Ms. Torresen, if confirmed, would be the first woman to serve as District Judge for Maine. Maine has a history of superb federal judges, and I believe that Ms. Torresen will continue that tradition if confirmed.



COMMITTEE ON THE JUDICIARY

ELIZABETH DONOGHUE CHAIR 15 MAIDEN LANE, 17TM FLOOR NEW YORK, NY 10038 Phone: (212) 349-3000 Fax: (212) 587-0744

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ELIZABETH DORFMAN ADMINISTRATIVE ASSISTANT 42 W. 44TH STREET NEW YORK, NY 10036 PHONE: (212) 382-6772 Fax: (212) 869-2145 edorfman@nycbar.org April 27, 2011

Bruce Cohen, Esq. Chief Counsel The Honorable Patrick J. Leahy 433 Russell Senate Office Building Washington, D.C. 20510

Dear Mr. Cohen:

We are pleased to inform you that the Committee on the Judiciary of the New York City Bar has found William F. Kuntz, II, Esq., APPROVED for appointment to the United States District Court for the Eastern District of New York.

Very truly yours,

Elizabeth Donoghue

Chair

The Association of the Bar of the City of New York 42 West 44th Street, New York, NY 10036-6689 www.nycbar.org

Statement of Senator Chuck Grassley

Before the Committee on the Judiciary

On the Nominations of:

John A. Ross, to be United States District Judge for the Eastern District of Missouri

Timothy M. Cain, to be United States District Judge for the District of South Carolina

Nannette J. Brown, to be United States District Judge for the Eastern District of Louisiana

Nancy Torresen, to be United States District Judge for the District of Maine

William F. Kuntz, II, to be United States District Judge for the Eastern District of New York

May 4, 2011

Mr. Chairman:

I extend my welcome to the nominees appearing before us today, each nominated to be a United States District Judge. I also welcome their families and friends. Their qualifications and backgrounds have been thoroughly vetted and reviewed. Today Committee Members and the public get to hear directly from them. So I welcome you all here, and look forward to the testimony. I will insert my full statement into the record.

John Ross is nominated to be United States District Judge for the Eastern District of Missouri. Mr. Ross received his B.A. from Emory University in 1976 and his J.D. from Emory School of Law in 1979. He began his legal career with the St. Louis County Prosecuting Attorney's Office. In 1986, he was appointed Assistant Chief Trial Attorney, handling more complex and scrious felony cases. From 1991 to 2000, Mr. Ross served as County Counselor for St. Louis County. In January 2000, Mr. Ross was appointed by the Governor as a Circuit Judge, where he has served since that time. He was retained by the voters of Missouri in 2002 and 2008. The American Bar Association has rated Mr. Ross "Well Qualified."

Timothy Cain is nominated to be United States District Judge for the District of South Carolina. Judge Cain received his B.A. from the University of South Carolina in 1983, and his J.D. from

University of South Carolina School of Law in 1986. Following law school, Judge Cain served as a part time Assistant Public Defender with the Oconee Defender Corporation and as an Associate with Miley & Mccaulay. From 1988 to 1990, Judge Caine served as Assistant Solicitor General for the Solicitor's Office of the Tenth Judicial Circuit where he represented South Carolina in prosecutorial matters. Judge Cain entered private practice again in 1990 as an Associate with Brandt & Fedder, which later became Brandt, Fedder, Graham & Cain when he made Partner. In 1992, the County Supervisor appointed Judge Cain as County Attorney for Oconee County. From 1996 to 2000, he served as Partner of Ballenger, Fedder, Cain and Norton, L.L.P., which later became Fedder, Cain, and Norton, L.L.P. In 2000, the South Carolina General Assembly elected Judge Cain to serve as a Family Court Judge in the Tenth Judicial Circuit. The General Assembly re-elected him in 2004 and 2010. In 2005, the Chief Justice of the South Carolina Supreme Court appointed Judge Cain to serve as the Chief Administrative Judge for the Family Court of the Tenth Judicial Circuit. By designation of the Chief Justice, Judge Cain also served as an Acting Associate Justice for the South Carolina Supreme Court on several occasions. The American Bar Association has rated Judge Cain "Qualified."

Nannette J. Brown is nominated to be United States District Judge for the Eastern District of Louisiana. Ms. Brown received a B.A. from the University of Southwestern Louisiana in 1985, a J.D. and an L.L. M from Tulane Law School in 1988 and 1998, respectively. From 1988 to 1992, Ms. Brown worked at Adams & Reese. From 1992 to 1994 she served as a Teaching Fellow at Tulane Law School. From 1994 to 1996, she worked as the Director of Sanitation for New Orleans. From 1996 to 2010, Ms. Brown practiced with mid-to large firms defending public bodies, railroads, businesses, and individuals. Ms. Brown has also taught a number of legal courses at Southern University Law Center. She has served on the Louisiana Hurricane Mediation Program and was a founding member of the Loyola University of New Orleans College of Law Mediation Clinic. On May 3, 2010, she was appointed City Attorney for the City of New Orleans. The American Bar Association has rated Ms. Brown "Qualified."

Nancy Torresen is nominated to be United States District Judge for the District of Maine. Ms. Torresen received a B.A. from Hope College in 1981 and a J.D. from the University of Michigan

School of Law in 1987. She began her legal career as a law clerk with the Honorable Conrad K. Cyr, of the United States District Court for the District of Maine. In 1988, she joined Williams and Connolly as an Associate. Since 1990, Ms. Torresen has served as an Assistant United States Attorney. From 1990 to 1994, she served in the U.S. Attorney's Office in Maine. From 1994 to 2001, the Department of Justice detailed Ms. Torresen to the Maine Department of the Attorney General Criminal Division in the Appellate Section. In 2001, Ms. Torresen returned to the District of Maine, serving in the Criminal Division. The American Bar Association has rated Ms. Torresen "Well Qualified."

William Kuntz, II is nominated to be United States District Judge for the Eastern District of New York. Mr. Kuntz received his B.A. from the Harvard College in 1972, and an M.A. from Harvard University in 1974. He earned his J.D. in 1977 and a Ph.D. in American Legal History in 1979 through a joint program at Harvard University. Following law school, he entered into private practice, first with Shearman and Sterling. Since 1986, he has been a partner with a number of firms focusing on commercial litigation. Mr. Kuntz was appointed, and subsequently reappointed by New York Mayors Koch, Dinkins, Giuliani and Bloomberg to serve on the New York City Civilian Complaint Review Board from 1987 through 2010. Mr. Kuntz has also taught courses in American Legal History at Brooklyn Law School. The American Bar Association has rated Mr. Kuntz "Well Qualified."

Committee on the Judiciary United States Senate "Nominations" May 4, 2011

Senator Chuck Schumer Introduction of William F. Kuntz, II, Nominee to the U.S. District Court for the Eastern District of New York

Mr. Chairman, thank you for the opportunity to introduce Dr. William F. Kuntz II to the committee today.

I have no doubt that you and my other colleagues on the committee will be just as impressed as I have been with Dr. Kuntz – he has exactly the skills, temperament, and experience to be a perfect addition to one of the busiest United States District Courts in the country.

Dr. Kuntz, currently a partner in the New York office of Baker Hostetler, is a native of Harlem. He grew up in what was then called the Polo Grounds Projects (now the Rangel Projects) and went to high school at Fordham Prep in the South Bronx.

He earned his undergraduate degree from Harvard University, followed by a masters degree in history, followed by a law degree and a Ph.D. in American legal history—all from Harvard, and all within 11 years of arriving in Cambridge.

I would venture that throughout this country, Dr. Kuntz has few peers in terms of education and training. But Dr. Kuntz did not use his degrees to go on to teach and write – a valuable career path, to be sure, but possibly, not one that would have put his skills as an advocate and his commitment to the people of New York to their highest and best use.

Instead, Dr. Kuntz went on to log 33 years of litigation experience at some of New York City's finest law firms. Moreover, he served for 23 years as a commissioner on the city's Civilian Complaint Review Board.

This independent agency oversees the investigation of citizens' claims of misconduct by New York City police officers. By all accounts, Dr. Kuntz has staked out an admirable middle ground that is informed by hard investigative work and careful consideration of all of the 5,000 cases that come before the Board every year.

In private practice, some of his most notable cases have included recovering money from those who steered clients to Bernard Madoff, and recovering assets from the indicted Wedtech company.

Dr. Kuntz's commitment to public service is long and impressive. He has served in leadership positions on the Lawyers' Committee for Civil Rights Under Law, the Legal Aid Society of New York, the New York City Bar, and the Practicing Law Institute – among others.

Mr. Chairman, I sincerely hope that we can move Dr. Kuntz's nomination along as quickly as possible. He would fill a judicial emergency vacancy in the Eastern District of New York, a court that adjudicates a large share of critical cases such as terrorism and terrorist financing, organized crime, and mortgage fraud. Dr. Kuntz is sorely needed, and more than up to the task.

Like my colleagues, I look forward to Dr. Kuntz's testimony here today, and to his service on the bench.

NOMINATIONS OF STEVE SIX, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE TENTH CIRCUIT; MARINA GARCIA MARMOLEJO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS; MICHAEL C. GREEN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK; WILMA ANTOINETTE LEWIS, NOMINEE TO BE JUDGE FOR THE DISTRICT COURT OF THE VIRGIN ISLANDS; MAJOR GENERAL MARILYN A. QUAGLIOTTI, USA (Ret.), NOMINEE TO BE DEPUTY DIRECTOR FOR SUPPLY REDUCTION, OFFICE OF NATIONAL DRUG CONTROL POLICY

TUESDAY, MAY 24, 2011

U.S. SENATE, COMMITTEE ON THE JUDICIARY, Washington, DC.

The Committee met, pursuant to notice, at 2:33 p.m., Room SD-226, Dirksen Senate Office Building, Senator Amy Klobuchar, presiding.

Present: Senators Grassley, Cornyn, and Lee.

OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. I am pleased to call this nominations hearing of the Senate Committee on the Judiciary to order, and pleased to have our Ranking Member, Senator Grassley, here. I want to thank Chairman Leahy for allowing me to chair this hearing. As you know, we're starting on time.

I want to give a warm welcome to all of our nominees. We also welcome the family and friends that have accompanied all of you.

You will have an opportunity to introduce them shortly.

First, I would like to call upon Senator Cornyn, a member of this Committee, to introduce Marina Garcia Marmolejo, who is nominated to be a District Judge for the Southern District of Texas, and I would also like to welcome the Virgin Islands delegate, Congresswoman Donna Christensen, to introduce Wilma Lewis, who is nominated to serve on the U.S. District Court of the U.S. Virgin Is-

lands. Thank you, Senator Cornyn and Congresswoman Christensen, for appearing today. Please feel free to excuse yourself when you're done; I know you have busy schedules. Senator Cornyn.

PRESENTATION OF MARINA GARCIA MARMOLEJO NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS PRESENTED BY HON. JOHN CORNYN, A U.S. SEN-ATOR FROM THE STATE OF TEXAS

Senator CORNYN. Well, thank you, Madam Chairman, Senator Grassley. It is my pleasure to speak on behalf of the nomination of Marina Marmolejo, who is here with her husband in the front row, and to support her nomination as U.S. District Judge for the Southern District of Texas in Laredo.

Ms. Marmolejo applied for this position and was screened by a bipartisan Federal Judicial Evaluation Committee appointed by Senator Hutchison and myself. Senator Hutchison and I interviewed her and recommended her to President Obama, and are pleased that she comes to this Committee as a consensus nominee. Based on her broad experience and commitment to public service, I believe she'll make an outstanding addition to the Federal bench in Texas.

Born in Nueva Laredo, Mexico and naturalized as a U.S. citizen, Ms. Marmolejo's professional accomplishments are a testament to her determination and hard work. After graduating from the University of the Incarnate Word in my home town of San Antonio, Ms. Marmolejo went to receive her Master's and law degree from another alma mater of mine, St. Mary's University School of Law.

She consistently set the standard throughout her academic career, completing each degree program with honors and serving as an associate editor on the St. Mary's Law Journal. Following law school, she demonstrated a strong commitment to public service, first as an assistant public defender from 1996 to 1999, where she worked to ensure that the indigent and vulnerable defendants received their constitutional right to a fair trial.

In that capacity she appeared in 350 cases before Federal District Courts in both the Southern and Western Districts of Texas. Her work as a public defender was so impressive that in 1999 she was recruited to serve as an Assistant U.S. Attorney for the Southern District. In her role as a Federal prosecutor, she spent the next 8 years handling over a thousand cases that brought dangerous criminals to justice, such as human traffickers and drug smugglers, gun runners, and gang members. Clearly, Ms. Marmolejo's experience fighting these scourges will suit her well given the Southern District's proximity to the increasingly dangerous U.S.-Mexico border.

As a prosecutor, Ms. Marmolejo has also worked to ensure that our elected officials lived up to the highest ethical standards, prosecuting multiple public corruption cases. For her work in one high-profile case she earned the prestigious Director's Award for her superior performance as an Assistant U.S. Attorney, one of the highest honors available to career Federal prosecutors.

She also won the attention of her superiors for her intricate knowledge of the criminal justice system and her prosecutorial talents. She was repeatedly recruited by the Department of Justice's Overseas Prosecutorial Development Assistance and Training Program to teach trial advocacy to foreign prosecutors and agents in

Colombia and the Dominican Republic.

In 2007, she went into the private practice of law with the firm Thompson & Knight in San Antonio. In 2009, she joined Diamond McCarthy, LLP as of counsel, and became a partner later that year. She is now a partner in the Reid Collins Tsai law firm based in Austin.

So you can see from her vast experience and her public service that Ms. Marmolejo is well qualified. She has also received widespread applause from the community. For example, the Laredo LULAC Council has recognized with its Tejano Achiever's Award, and the Nueva Laredo Rotary Club has similarly awarded her service to the community.

So while I could continue to offer additional praise for Ms. Marmolejo's career and her character, the record is already clear. I believe she will probably serve as a Federal District Judge, so I would urge my colleagues to join Senator Hutchison and me in sup-

porting Ms. Marmolejo's well-deserved nomination.

Thank you.

Senator KLOBUCHAR. Thank you very much, Senator Cornyn.

Congresswoman Christensen, I will warn you, you may not be able to match him for having his nominee rhyme with her place of residence, Marmolejo of Laredo. It almost rhymes. I kind of liked it.

Ms. Christensen.

PRESENTATION OF WILMA ANTOINETTE LEWIS, NOMINEE TO BE JUDGE FOR THE DISTRICT COURT OF THE VIRGIN IS-LANDS PRESENTED BY HON. DONNA M. CHRISTENSEN, A U.S. REPRESENTATIVE FROM THE U.S. VIRGIN ISLANDS

Representative CHRISTENSEN. Thank you, Madam Chair and Ranking Member Grassley, for the opportunity to introduce the Hon. Assistant Secretary Wilma A. Lewis, President Obama's nominee to serve as the next District Court Judge in the U.S. Virgin Islands.

As the daughter of the first native Virgin Islands judge of our District Court, it is an honor to introduce an exceptional woman and public servant who, with your confirmation, would create another judicial milestone, as she would become the first woman to serve as a Federal judge in the District Court of the U.S. Virgin Islands.

Assistant Secretary Lewis would bring an extensive, varied, and broad wealth of experience from both the public and private sector to the District Court of the U.S. Virgin Islands. We are so very proud of her record of distinguished service and know that any number of other Federal judicial districts would have vied to have her bring her level of expertise to them, and many would have wanted to have the honor and privilege that I have to introduce her to you today.

I know her as a devoted daughter of parents who themselves gave a collective 67 years of service to the Federal Government, her father Walter Lewis in the U.S. Postal Service, and her mother Juta Lewis in what was then the U.S. Customs Service.

We are both active members of the Moravian church that played an important role in bringing equity and justice to the enslaved Af-

ricans they came to live among back in the early 1700s.

I know that you have her outstanding resume, but she has served the District of Columbia and our Nation in some of the most demanding local and Federal positions of government. Her tenures in those offices are of immense pride to the people of the U.S. Virgin Islands and I would not be able to go back home if I did not at least mention some of the more important ones as I present her to you today.

In 2009, President Obama and Interior Secretary Ken Salazar called upon Attorney Lewis' vast expertise to serve as the Assistant Secretary for Lands and Minerals Management at one of the most challenging times for that agency. She previously served as Interior's Inspector General, and earlier as an Associate Solicitor in the

General Law Division.

Assistant Secretary Lewis served the U.S. Department of Justice as the U.S. Attorney for the District of Columbia, as well as on several key boards, committees, and commissions, including the Judicial Nomination Commission and the Committee on Local Rules of the U.S. District Court for the District of Columbia.

Attorney Lewis has also had significant experience in the private sector. Madam Chair and Ranking Member, throughout her life, Wilma A. Lewis has distinguished herself at every turn, in college, in law school, and in the coveted legal position she had held and

executed with honor, distinction, and excellence.

She was the valedictorian of her All Saint's Cathedral High School in 1974, graduated with honors from Swathmore in Political Science in 1978, and from Harvard Law School in 1981. She was featured in the 2003 Harvard Law Bulletin as among the 50 female graduates who used their legal education to take them to extraordinary places, and has been recognized and honored by many organizations in the Virgin Islands and across the U.S. mainland.

Although the nominee has spent most of her professional life on the United States mainland, she has maintained close and continuous contact with her home through the church, several community organizations, and of course through her ties to family and friends. The Virgin Islands Bar Association unanimously voted her as the Most Qualified and recommended her highly for this position.

We're asking that this body, in confirming this outstanding individual, give her the opportunity to do what has always been her dream: to use all of the experience and skill she has accumulated

over the years of service to serve her beloved home.

Thank you for the opportunity again to present this outstanding individual and nominee for the District Court of the U.S. Virgin Islands.

thank you, KLOBUCHAR. Well, Congresswoman Christensen. Thank you for joining us today.

I would also like to note that Senators Schumer and Gillebrand were not able to make it today, but they have submitted remarks for our nominee, Michael Green. These statements will be submitted to the record.

[The prepared statements of Senators Schumer and Gillebrand appear as a submission for the record.]

Senator KLOBUCHAR. I believe that Senator Hutchison is going to be joining us shortly. Before Senator Grassley gives an opening statement, I would like to introduce the rest of our nominees.

Steve Six has been nominated to serve on the U.S. Court of Appeals for the Tenth Circuit. Currently he is a partner at the Kansas law firm of Stevens & Brand. He is also a research scholar with Columbia University Law School's State Attorney General program. Mr. Six previously served as the Kansas Attorney General, and he even has experience living in Minnesota. I knew you would be interested in that, Senator Grassley. He graduated from Carlton College in Northfield, Minnesota, before attending the University of Kansas School of Law.

Michael Green has been nominated to sit on the U.S. District Court for the Western District of New York. Currently, the District Attorney for Monroe County, New York, Mr. Green was previously Assistant District Attorney for Monroe County and an associate at the Morris & Morris law firm in Rochester, New York. Mr. Green attended LeMoyne College and received his J.D. from Western New England College School of Law.

Last, but certainly not least, we have Major General Marilyn Quagliotti. General Quagliotti has been nominated to be Deputy Director for Supply Reduction in the Office of National Drug Control Policy. Wow, that's a long title! She is currently a management consultant with the Durango Group, and she had a long and distinguished career in the U.S. Army, serving for over 30 years. Welcome, General Quagliotti.

Now I'm going to turn it over to Senator Grassley for any opening remarks he would like to make.

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I extend my welcome to the nominees appearing before us today. I also welcome their family and friends, and I know you're proud of your family and friends that are being nominated for these prestigious positions.

I'm eager to hear testimony and I'll be asking many questions. I expect the nominees will fully answer my questions. Too often, nominees appear before us and fail to give meaningful responses. Unfortunately, a well-worn response that we get to questions, meant to have questions of substance, we too often hear, "I will follow the law, if confirmed". That type of response, which sounds coached, even robotic at times, doesn't really get us very far with understanding the competence, integrity, and temperament of a particular nominee. It certainly gives us no insight into the thought process, legal reasoning skills, or general judicial philosophy of the nominee.

I am going to insert the rest of my statement in the record because it's very long. So, I'll yield the floor.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Senator KLOBUCHAR. OK. Thank you.

I will now ask our first nominee, Mr. Steve Six, to come forward and remain standing and raise your right hand. I'll administer the

[Whereupon, the witness was duly sworn.] Senator KLOBUCHAR. Thank you. Have a seat.

Mr. Six, do you want to take a moment to introduce anyone who is with you here today at this hearing?

STATEMENT OF STEVE SIX, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE TENTH CIRCUIT

Mr. SIX. I do. Thank you, Senator Klobuchar, for that kind introduction, and Senator Grassley, for those welcoming remarks. Introducing my family who is with me here today supporting me, I'll start with my wife Betsy. My wife of 15 years. Going in age from the oldest, my daughter Emily Six, Sam Six, Henry Six, and Will Six. And I'm also fortunate to have my parents, retired Supreme Court Justice—Kansas Supreme Court Justice Fred Six here, and my mother, Lillian Six. Thank you all.

Senator Klobuchar. That's almost six Sixes.

[Laughter.]

Senator KLOBUCHAR. That's very good.

Mr. Six. I do thank the Committee for allowing me to have this hearing today, and look forward to your questions.

Senator KLOBUCHAR. Well, very, very good. I have a few questions. I know it sounds like Senator Grassley has some questions as well.

Could you talk about how you describe your judicial tempera-

ment and why you think you'd make a good judge?

Mr. SIX. Well, thank you for that question, Senator. In my past work experience, I had the honor of serving as a State judge in our Kansas system and the approach that I took in that position was to really try to show up every day and work hard on being fair, to be independent, and to do what sounds kind of trite, but to impartially apply the law as I saw it to the facts that appeared before me. That's the judicial philosophy I practiced for the time I was a State court judge, and what I'd hope to do if I was fortunate enough to be confirmed to this position.

Senator Klobuchar. Thank you. And has your father passed

along any ideas to you?

Mr. Six. Well, he has been very influential in my life, certainly in a lot of ways. I don't know that there's any particular judicial lessons he's passed on. It's been more certainly ethics, integrity, how do you present yourself, what does your word mean when you give it to someone, and really how to practice law in, I think, a

very gentleman-like or professional fashion.

Senator Klobuchar. So going to the Circuit Court, if you're confirmed, is a little different than being a District Court judge or a State Court judge, as you will be working with many judges, active senior judges. And do you think it's important to seek out agreement with your colleagues? Is there value to finding common ground, even if it slightly narrower in scope, to get a unanimous opinion? What are your views on that?

Mr. Six. Well, I think what I've learned over my legal career, both in the private sector and public sector, is that it's important in the law to have a vigorous debate about what you believe a statute may be or what the cases say about the law or the precedents. Whether you're doing that with lawyers in private practice or, as I did when I questioned lawyers when I was a judge, you can have that vigorous debate but still when you're done be civil and get along.

And certainly I would anticipate, if I was fortunate enough to be confirmed, that I would have a vigorous debate with my colleagues on a panel, respecting other views, listening to other views. But at the end of the day, you need to make your own decisions and hold true to what your principles or beliefs are in the law that you've studied.

Senator KLOBUCHAR. Thank you.

Then last, Mr. Six, as Kansas Attorney General you played a role in, or commented on, many high-profile matters, like prosecuting child pornographers. As a former prosecutor, I know that that is—I believe it's very useful experience. How do you think that will play into your background as you look to the Circuit Court judge-

ship?

Mr. SIX. Well, as—as someone with young children, when I was Attorney General, one of the priorities that soon came to my attention was the dangerous that young children are facing online in various ways through all kinds of activity. That certainly was a priority and, when you're working hard for something that you think and believe in, it's sort of like not even going to work in the day because you enjoy the work so much. You know, that was important work to me in those positions.

And, you know, I advocated for a lot of things as Attorney General, but I certainly recognized that there's a difference in our foundation and form of government in the separation of powers between someone's role in the executive branch, and certainly the judicial

branch.

Senator Klobuchar. Well, thank you.

And before I turn to Senator Grassley and Senator Lee for their questions, we're going to take a little break as Senator Hutchison is here to speak for Ms. Marmolejo of Laredo.

PRESENTATION OF MARINA GARCIA MARMOLEJO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS, PRESENTED BY HON. KAY BAILEY HUTCHISON, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator Hutchison. Thank you, Madam Chairman, very much. I appreciate it. I was in another hearing, and when I got word that you all were ready I raced over. So, thank you, because I am pleased to be here to introduce Marina Garcia Marmolejo. She has been nominated to serve as a District Judge for the Southern District in Laredo, Texas. This is a bench that needs all hands on deck. It's got a heavy, heavy caseload, and so we are looking for her confirmation as expeditiously as possible.

She received a Bachelor of Science degree in English at the University of the Incarnate Word in San Antonio, where she graduated magna cum laude. She went on to graduate from St. Mary's University with a Master of Arts degree in International Relations,

and then received her Juris Doctorate from St. Mary's University School of Law.

She was born in Nueva Laredo, Mexico, but grew up going to school in Laredo, Texas and learned very early the value of a strong education. She became a U.S. citizen in 1995. She's married to Wesley Boyd and has two children, Natalia, age 10, and Nicolas, age 8. Since completing her studies, she served as a substitute teacher in Laredo, and after law school served as an Assistant Federal Public Defender for 3 years, where her performance was consistently rated as substantially exceeding expectations.

sistently rated as substantially exceeding expectations.

In 1999, she became an Assistant U.S. Attorney in the Southern District of Texas, where she worked for 8 years and handled over 1,000 cases. In 2002, the Department of Justice awarded her the prestigious Director's Award for superior performance as Assistant U.S. Attorney for her work with several public corruption cases.

In 2007, she went with the firm of Thompson & Knight in San Antonio, and now is a partner at Reed, Collins & Sigh. In 2010, she was named by *Hispanic Business Magazine* one of the top 100 influential Hispanic leaders. In 2011, Super Lawyers named her a Texas Rising Star. She has a solid understanding of the law and a strong reputation in this South Texas community.

I believe she is well qualified to handle the daily challenges of being a Federal judge and look forward to working for her confirmation.

Thank you very much for letting me intervene and show my support for Ms. Marmolejo.

Senator Klobuchar. Well, thank you very much, Senator Hutchison. I'm aware of those heavy caseloads in Texas, so I'm glad that this has moved along and that this nomination has been made. Appreciate it.

Senator HUTCHISON. Thank you.

Senator Klobuchar. Senator Grassley.

Senator Grassley. Mr. Six, I understand you have the support of two Republican Senators from your State. I congratulate you on that.

I have some questions, as I indicated. When you were appointed Attorney General in 2008, there was an ongoing controversy related to the investigation of Dr. Tiller and the Planned Parenthood Clinic and the allegations that they were performing illegal, late-term abortions. Your predecessor closed the investigation and wrote Planned Parenthood a letter, stating that no charges would be filed. The District Attorney continued to pursue charges.

According to media reports, you refused to reopen the investigation even though Judge Anderson testified that there were discrepancies in the Planned Parenthood medical records, and that those discrepancies raised "substantial, factual and legal issues about their competence within the law".

My first question: if you were aware of Judge Anderson's concerns about the medical records prior to making your decision, why didn't you reopen the investigation?

Mr. SIX. Well, thank you for that question, Senator. As you mentioned, prior to me being appointed Attorney General we had had a period going back to two prior Attorney Generals where the issue you were talking about had been vigorously engaged in a back-and-

forth between them. We had an Attorney General that then resigned. When I was appointed, I stepped into some of those challenging issues. There certainly weren't any issues that I sought out, but tried to handle them in the most professional way that we could.

We had Assistant Attorney Generals who were working on the case. And like all criminal cases, as the Attorney General, I have a Criminal Division and prosecutors who handle the cases. I don't in any case in our Criminal Division tell the prosecutors what I think they should do or not do. They're given their ethical duties and responsibilities and instructed to seek a conviction for charges that they believe evidence supports. For all the cases we handled in the Attorney General's Office, that's what I did.

Senator Grassley. Well, where—

Mr. Six. And the issues——

Senator GRASSLEY. Were you aware of Judge Anderson's concerns

prior to making your decision?

Mr. SIX. Well, there was never a decision on my part to pursue or not pursue that case. It simply wasn't something that was going on. The different—

Senator Grassley. Were you—

Mr. Six. The different cases, including the prosecution of George Tiller, was going on. That continued after I became Attorney General and there were various issues that went up to our Kansas Supreme Court on sensitive medical records. We continued to bring those to the attention of the Supreme Court because they had previously entered instructions for us about how we were to handle those records, and we were very sensitive about that because the prior Attorney General is before the disciplinary board of our State now and has been sanctioned in limited ways by our Supreme Court over various activities relating to that. So I was very sensitive to always bring it to the court and let the court make the decisions.

Senator GRASSLEY. Were you ever subject to any pressure or communication with the Governor of the State or anybody in the administration not to pursue charges against Planned Parenthood?

Mr. Six. The Governor at the time I took office was now Secretary Sebelius, and I never had a discussion with her about any topics or any cases in the Attorney General's Office in our Criminal Division. We would occasionally brief her on cases before the State. We had a lottery case—

Senator Grassley. You've answered my question. That's OK.

Mr. Six. Thank you.

Senator GRASSLEY. While your office refused to continue the investigation of Planned Parenthood, Mr. Phil Kline, who was District Attorney and former Attorney General, continued the case. Did you ever seek to impede his prosecution of Planned Parenthood?

Mr. SIX. Again, when I took office this litigation had been going on for some period of time. The judge you mentioned had previously testified in a hearing overseen by our Kansas Supreme Court before I became Attorney General. The case you've just referenced, the judge received a subpoena to appear in District Court and testify. When any judge in the State is subpoenaed or receives—is sued, they contact the Attorney General's Office for representation.

In this case, that is what happened. Given the sensitive nature of the case I thought it would be best to apply outside counsel outside of the office to him. He, under our procedure, got his own attorney and the matter was referred again to our Kansas Supreme Court. The Kansas Supreme Court then issued orders about what the judge should and shouldn't do, and that was the appropriate forum, I thought, for how it should be handled.

Senator Grassley. Is that your answer then also to why did you continue to have legal action to compel Mr. Kline to return all documents that he retained from the investigation in the Attorney

General's Office?

Mr. Six. Again, the medical records, these private patient medical records, were the subject of an order by the Kansas Supreme Court about how they were supposed to be handled. When Mr. Kline left office, he took the entire file and the records with him on the morning he left office. Then another Attorney General, Attorney General Morrison, went into office and he started a case to get those materials returned. That started sometime in January of 2007.

I became Attorney General in February of 200—or January 30, 2008. And at the time I became Attorney General, my name was substituted into the caption where the previous Attorney General's name had been. The court ordered that the lawyers show up for oral argument. An Assistant Attorney General from my office showed up and argued the case and again said that these patient records should be redacted to remove identifying information and they should be managed in a secure law enforcement way and put the matter before the Supreme Court.

Senator GRASSLEY. The case brought against Planned Parenthood relied in part on Kansas' late-term abortion law. Recently Kansas amended their abortion law to bar abortions at 22 weeks gestation, except to save the mother's life. Do you believe that the Kansas law is consistent with the Supreme Court's decision of Planned Parenthood v. Casey, where the court said that abortion

restriction cannot impose "an undue burden" 1A?

Mr. Six. You know, when I was Attorney General I did not evaluate that issue. And since I've gone into private practice I haven't had any similar issues like that come out and I haven't read the Kansas statute. I simply haven't studied it, Senator.

Senator Grassley. I think I'll put the rest of the questions for answer in writing.

[The questions appear under questions and answers.]

Senator KLOBUCHAR. OK. Very good. Thank you.

Senator Lee.

Senator Lee. Thank you very much, Mr. Six, for joining us. I have a special interest in the Tenth Circuit, in part because it in-

cludes my State. So, thank you for being with us today.
While you were serving as Attorney General of Kansas, 13 States originally filed a lawsuit challenging the constitutionality of the Affordable Care Act, also known as Obama Care, insofar as it relates to the individual mandate aspect of that. It's my understanding that Kansas, after you left office, later became one of the now 26

States. Some of the original States included Florida, Michigan, Pennsylvania, Washington, a whole host of others, including Utah. Kansas has since joined then. A total of 60—26 States have joined

in on this, a majority of them—a majority of all States.

But when the question was presented to you as to whether or not you wanted to sign documents getting your State involved in it, you were quoted as saying "arguments have been advanced that the law's requirement that all individuals purchase health insurance is unconstitutional. Under current U.S. Supreme Court precedent, such an argument is highly unlikely to succeed". Now, that litigation is still ongoing. We've had a couple of courts issue opinions going a couple of different ways. But needless to say, it has proven to be a complex issue, certainly not a straight up-or-down issue.

I was wondering if you could just talk to me briefly about kind of what you had in mind, what precedent you were relying on in saying that this is highly unlikely to succeed and that it would be essentially a waste of taxpayer revenue to become involved in a

lawsuit.

Mr. Six. Yes. Thank you, Senator Lee. What I did with all issues that appeared in the Attorney General's Office, was they would come in and we'd try to apply the best analysis we could. I don't know when in the course of time I made that statement, but, you know, I assigned various claims, the six or so claims under the individual or employer mandate to lawyers in the office. They researched them. They returned reports that we then reviewed. And my opinion after that review was that the great majority of the claims looked unlikely to succeed. I think that's proven true perhaps through all the courts, that maybe four of the claims have uniformly been dismissed.

The other thing I did then on the individual mandate, which I think was the most challenging aspect, was we reviewed it as to the State Attorney General, because that's the decision we'd been making. Our analysis was that under the standing cases, that the State Attorney General didn't have the authority to pursue the individual mandate claim. And for those reasons, I thought that our State, you know, given the limitations and the challenges we were facing, had other cases and things that we were struggling to meet the demands of, and for the resources that would be required to get involved in that. You know, we decided not to, and ultimately my view was it would go to an appellate court and the Supreme Court and that would apply to our State anyway.

Senator LEE. So it was your conclusion that the State would lack Article 3 standing or prudential standing in order to bring that?

Mr. SIX. You know, I did not review what the conclusion was before appearing here today. I can just recall, as we analyzed it, as it applied to the Attorney General bringing that claim, we didn't think we had standing.

Senator Lee. OK. But your recollection is that your analysis was based on standing rather than on the merits position on the sub-

stantive legal outcome?

Mr. SIX. The standing issue is what we felt like would be determinative on the Attorney General bringing that. We knew that in that case there were individual plaintiffs that may be advancing the claim, and so if it was going to succeed it would apply to our

State. And, you know, the final reason really was that our—under our Kansas statutes, the House or the Senate can pass a resolution to have the Attorney General file a lawsuit and the House had that resolution and they voted it down. And certainly we didn't want to be in a position where we were advancing a case that the House and the people at least voted down as far as pursuing.

Senator Lee. Sure. But that wouldn't affect your standing

analysis.

Mr. Six. No, not on a legal——

Senator LEE. I mean,—has standing or he doesn't.

Mr. Six. Correct.

Senator Lee. It seems odd to me that an Attorney General could be thought not to have standing to challenge a law that requires substantial investment on the part of the State to set up certain infrastructure with all kinds of mandates that are not necessarily funded, at least not directly to the States. But I understand that

to be your position.

Now, in response to the argument that the unfunded mandate requiring the States to expand the eligibility standards for Medicaid, or else, you know, in the alternative, lose risking—risk losing Federal funds. In response to an argument that that might violate the State's rights, the State's Tenth Amendment rights, you argued, as I understand it, that this was a policy argument, not a constitutional argument. How can you defend that statement in light of Prince v. United States and the acknowledge that the Federal Government cannot commandeer State executive or legislative machinery in order to adopt or implement a Federal legislative or administrative program?

Mr. Six. Well, I don't recall the context. I don't dispute that I

Mr. SIX. Well, I don't recall the context. I don't dispute that I made that statement and that it's accurate. I don't recall the context of what I said at that time. And unfortunately, Senator, I apologize, but I don't know what the *Prince* case—I have not re-

viewed that.

Senator LEE. OK. But if—in light of that precedent, let's just—just take for a moment—I understand that you haven't had an opportunity to review *Prince*, but that would make it a constitutional

argument as opposed to a policy argument, would it not?

Mr. Six. I would say that all of the arguments should be legal arguments and would be decided in a court of law as opposed to a policy. So that might have just been a loose statement on my part. As you know, when you are in the time period we're talking about, I imagine that when I was campaigning for Attorney General, and you make a lot of statements all day all over the State, I would agree that it is a legal argument on each of the claims that have been advanced in the Florida lawsuit as to whether they are constitutional or not constitutional, and those would not be policy arguments.

Senator LEE. All right. I see my time has expired. Just as I would do if I were arguing before the Tenth Circuit, I'll yield the

floor.

Mr. Six. Thank you, Senator.

Senator GRASSLEY. I have one more.

Senator Klobuchar. OK. One more thing, Senator Grassley. Then I had a few follow-ups.

Senator GRASSLEY. I'm going to—even though I asked you a lot of questions about the Planned Parenthood case, I would ask you to submit a full statement regarding your actions and involvement with regard to that case. Then as a result of that, I may have follow-up questions after I review your statement. Would you agree to do that?

Mr. SIX. Certainly, Senator.

Senator GRASSLEY. Thank you.

Senator KLOBUCHAR. Thank you. I'm sure I was listening to your exchange with Senator Lee, and I would hope he would put that question in writing so you'd have a chance to look at the case and expand on that more after you have a chance to look at what you said and what the case said.

Mr. SIX. Thank you.

Senator KLOBUCHAR. All right. Very good.

And I just want to confirm here, both Senator Moran and Senator Roberts, two Republican Senators, are supporting you for this position?

Mr. SIX. You know, I have had a conversation with Senator Moran and I wouldn't presume to——

Senator KLOBUCHAR. Well, they've allowed your nomination to go forward. Let me put it that way.

Mr. Six. I am here today.

Senator KLOBUCHAR. OK. Very good.

Senator Lee.

Senator LEE. Do we have time for one more round of questions? I just wanted to follow up on a couple of issues.

Senator Klobuchar. Sure. I'm actually asking some now.

Senator Lee. Oh. Oh, great. OK.

Senator KLOBUCHAR. I'm doing my second round and then that would be great.

Senator Lee. Then I will follow you. OK. I just wanted to make sure.

Senator Klobuchar. OK. Excellent. Very good.

And then the—I wanted to follow up a little bit on this—the questions involving your role as Attorney General. Obviously you were Attorney General representing the State of Kansas in litigation and other matters. Could you describe how you see the role of Attorney General different than the role of a judge, a Circuit Judge?

Mr. Six. Well, thank you for that question, Senator. Certainly as Attorney General, you are an advocate often for positions, whether they relate to public safety or other types of activities the office may pursue. At the same time, you're also the legal representative of the State and you defend statutes passed by the State legislature as to their constitutionality. You certainly do that whether you believe it's the right view or the wrong view, or a good statute or a bad statute. It's just your role to support what the legislature has done. So we did that in various ways and represented the State, and certainly if I were fortunate enough to be confirmed, I understand that under our separation of powers, as a judge you're in a completely different role.

Senator KLOBUCHAR. Right.

And with regard to the discussion on the patient protection Affordable Care Act, in that role you looked at the law and made a

legal analysis. Is that right?

Mr. Six. Not only that, I assigned it to our Assistant Attorney Generals, experts in various areas, and had them submit reports back to me. Then we met and talked about that. The conclusion not just of me but the research attorneys, the four or five of them in the office that were part of the team and were attorneys that were there prior to my becoming Attorney General, supported the view that I had in the discussion with Senator Lee.

Senator KLOBUCHAR. And it sounds like the—just looking at the numbers, the States were basically split on this, whether to get in-

volved in this suit or not. Is that right?

Mr. Six. Well, it's——

Senator KLOBUCHAR. Or this appeal.

Mr. SIX. It appears to be a bit of a rolling boulder gaining some speed, so there are more on now than at the time we made our decision.

Senator KLOBUCHAR. OK. Very good.

And the—and you also were involved and you wrote a letter objecting to that Nebralese compression. In that correct?

jecting to that Nebraksa compromise. Is that correct?

Mr. SIX. That was shortly before the bill was passed. There was the Cornhusker kickback, or the Nebraska compromise, what they were calling it. Essentially as I understood it, and it was a—

Senator KLOBUCHAR. I suppose you said we have more corn in

Kansas.

Mr. SIX. You know, I don't know if we do or not. But certainly the view of the people in Kansas was that they shouldn't be treated any differently or disfavorably from perhaps the folks in Nebraska. It was a complicated act and a lot of pages. From what we could gather, that was one of the potential results. I wrote a letter to the Congress suggesting that perhaps we shouldn't proceed that way.

Mr. Six. And just to clarify the Tiller questions that Senator Grassley had asked, that in fact your office actually prosecuted

Tiller on misdemeanor charges. Is that right?

Mr. Six. That's correct. When I took over as Attorney General I didn't go back through every case in the office and interject personal opinions into them. We had qualified prosecutors who were pursuing them. The cases that Senator Grassley discussed with me and the case against Dr. Tiller, I took over, and the cases continued with the Assistant Attorney Generals pursuing them, applying their ethical duties as prosecutors, and handling tough cases. There wasn't anybody in the office that would have chose to do that, but when it's your job as a prosecutor that's what you do.

Senator KLOBUCHAR. And then just to clarify for the record, Dr. Tiller was the doctor that was killed during church. Is that correct?

Mr. Six. That's correct.

Senator KLOBUCHAR. Thank you very much.

Senator Lee, you had more questions to ask? Senator Lee. Thank you very much.

I just wanted to follow up on our previous line of questioning. I noticed that on October 24, 2010, in a local paper in your State, you noted an explanation for your analysis that really wasn't related to the lawsuit, it was related to the constitutionality of the

Affordable Care Act generally, saying, "Following a thorough legal analysis I determined that there were no constitutional defects with the new health care law", which is different than just saying

there's no standing problem.

So in light of that, I want to delve into some of those issues for a minute if we could, dealing with the individual mandate. Would you agree, first of all, that James Madison got it right when he said in Federalist #45 that the powers of the Federal Government are few and defined, while those reserved to the States are numerous and indefinite. Do you agree with that general principle?

Mr. Six. I would agree with that. I believe the Tenth Amendment

supports that.

Senator Lee. OK. And in light of that, if in fact the powers of the Federal Government are few and defined, then there does have

to be some limit on Federal power.

Now, if Congress can wield the power necessary to tell individual Americans, individual Americans living within some State, whether it's Utah, or Kansas, or some other State, if Congress has the power to say to such a person, you must go out and you must buy a specific product, not just any product, but health insurance, the kind of health insurance that we in our infinite wisdom tell you that you must buy.

Isn't there a real slippery slope there in the sense that if we can do that and if we can then tell people they've got to buy that or else pay a penalty because it's good for their own health, what would then stop us from telling people that they need to go out and buy two servings of green, leafy vegetables every single day and eat

those so that they will be healthy? Couldn't we do that?

Mr. Six. Well, I understand the principle you're talking about and I think the Supreme Court, in the United States v. Lopez and United States v. Morrison cases, talked about the limits that you've just articulated. And I certainly would follow those precedents and that guidance. I think it's difficult of course to decide cases in the hypothetical. I think requiring somebody, just thinking about it as you presented it, to ingest something probably raising some substantive due process arguments that may not exist to having to buy something.

But I certainly understand the concept you're talking about, and if presented with that I would try to apply certainly the guidance that the Supreme Court has, and hopefully very soon maybe some analogous guidance that may come out of the Fourth Circuit, or certainly from the Supreme Court when they get this issue.

Senator LEE. Well, and in fairness if the hypothetical statute we were addressing were one just requiring you to ingest it, in addition to any substantive due process problems that might present, that also would be something regulating non-economic activity, eat-

ing, as opposed to actually purchasing health insurance.

But couldn't we change that simply by saying you must purchase? In other words, you must take the first \$200 a month out of your paycheck and buy two servings of green, leafy vegetables. We're not going to enforce it to make sure you actually eat it, but you have to buy it. How do you distinguish that from the individual mandate in the Affordable Care Act?

Mr. Six. Well, I think it is not something that I have analyzed approaching for today and the hypothetical you have referenced. It

certainly is, I think, a similar analysis.

Senator Lee. And if there are in fact limits on Federal authority, they would certainly have been breached by the time we get to the point of telling people they have to buy \$200 of green, leafy vegetables every month.

Mr. Six. That seems like an example that perhaps, if you just polled the room here, most people would agree with, I'd say.

Senator LEE. OK. And would they be right?

Mr. SIX. Again, it's hard to decide things in advance in a specific way or commit to what I would rule if that case would appear before the court. But I certainly hear what you're saying and it has a very solid sound to it.

Senator LEE. OK. Thank you.

Thank you very much.

Senator Klobuchar. Anything else?

[No response].

Senator Klobuchar. Well, thank you very much, Mr. Six.

Mr. SIX. Thank you.

Senator KLOBUCHAR. I see one of your sons is yawning. I won't say which one.

[Laughter.]

Senator KLOBUCHAR. But I thank you for appearing before us today. We look forward to hearing from you again. The record will stay open for any additional questions for 1 week. Thank you very much.

Mr. SIX. I appreciate the Committee's time. Thank you.

[The biographical information follows.]

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

Stephen Newton Six

2. Position: State the position for which you have been nominated.

United States Circuit Judge for the Tenth Circuit

3. Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Stevens & Brand 900 Massachusetts Street Lawrence, Kansas 66044

4. Birthplace: State year and place of birth.

1965; Lawrence, Kansas

 Education: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1990 – 1993, University of Kansas School of Law; J.D., 1993 1984 – 1988, Carleton College; B.A., Economics, 1988

6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2011 – present Stevens & Brand 900 Massachusetts Street Lawrence, Kansas 66044 Partner 2011 - present Columbia University Law School, State Attorney General Program 435 West 116th Street New York, New York 10027 Research Scholar

2008 – 2011 State of Kansas 120 SW 10th Street Topeka, Kansas 66612 Kansas Attorney General

2005 – 2008 State of Kansas Seventh Judicial District 111 East 11th Street Lawrence, Kansas 66044 District Court Judge

1994 – 2005 Shamberg, Johnson & Bergman 2600 Grand Boulevard, Suite 550 Kansas City, Missouri 64108 Partner (2000 – 2005) Litigation Associate (1994 – 2000)

1993 – 1994 United States Court of Appeals for the Tenth Circuit 643 Massachusetts Avenue, Suite 301 Lawrence, Kansas 66044 Law Clerk to Judge Deanell R. Tacha

1993 University of Kansas School of Law 1535 West 15th Street Lawrence, Kansas 66045 Legal Writing Teaching Assistant to Professor Ellen Sward

Summer 1993 Shamberg, Johnson & Bergman 4551 West 107th Street, Suite 355 Overland Park, Kansas 66207 Summer Associate Summer 1992 Cravath, Swaine & Moore 825 Eighth Avenue New York, New York 10019 Summer Associate

Summer 1991, August 1992 Shook, Hardy & Bacon 10801 Mastin, Suite 1000 Overland Park, Kansas 66210 Summer Associate

1988 – 1990
National Archives
Old Executive Office Building
17th and Pennsylvania Avenue, NW
Washington, D.C. 20503
Staff Assistant, Detailee Assigned to the White House Appointments and Scheduling
Office

Other Affiliations (uncompensated):

2004 – 2005 West Hills Homes Association No physical address President (2004 – 2005) Secretary (2006)

2003 – 2005 Kansas Bar Foundation 1200 SW Harrison Topeka, Kansas 66612 Board of Trustees

2001 – 2005 Kansas Bar Association 120 SW Harrison Topeka, Kansas 66612 Board of Governors

2002 – 2004 Kansas Trial Lawyers Association 719 SW Van Buren Topeka, Kansas 66603 Board of Governors 2001 – 2003 Kansas Law Society University of Kansas 1535 West 15th Street Lawrence, Kansas 66045 Board of Governors

1995 – 1996 Lawrence Habitat for Humanity 720 Connecticut Street Lawrence, Kansas 66044 Board Member

Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

I have not served in the military. I registered for selective service.

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Smiling Bull Award for Service to the Legal Profession, Leavenworth County Bar Association (2010)

Award for Combating Underage Drinking, Century Council (2010)

Key to City of Larned, for work preserving Pawnee County Hospital (2010)

Kansas Law Enforcement Training Center Service Award (2009)

Patriot Award, National Committee for Employer Support of the Guard and Reserve (2009)

Service Recognition Award, Southwest Kansas Bar Association (2009)

Crime Stoppers Service Award (2009, 2008)

DARE Officers Association Service Award (2008)

Outstanding Service Award, Douglas County Bar Association (2008)

Rice Foundation Scholar, Kansas Law School (1990-1993)

Order of the Coif, Kansas Law School (1993)

William Burdick Award in Law, for highest cumulative average after the first year, Kansas Law School (1991)

 Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association, Litigation Section (2001-2005) American Trial Lawyers Association

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Democratic Attorneys General Association, Allocation Committee (2008)
Douglas County Bar Association
Douglas County Bench-Bar Committee
Douglas County Law Library Board (2005-2008)
Earl O'Connor Inn of Court, Overland Park, Kansas, Associate Member (1998-2000)
Governors Domestic Violence Fatality Review Board (2008-2011)
Hugh Means Inn of Court, Lawrence, Kansas, Barrister (2005-2008)
Johnson County Bar Association
Johnson County Bar Foundation
Kansas Bar Association
       Board of Governors (2001-2005)
       Bench-Bar Committee (2001-2005)
       Chairman, Professional Insurance Committee (2002-2004)
       Annual Meeting Committee (2002)
Kansas Bar Foundation, Board of Trustees (2003-2005)
Kansas Board of Canvassers (2008-2011)
Kansas City Metropolitan Bar Association
Kansas Council For Interstate Adult Offender Supervision (2008-2011)
Kansas County and District Attorneys Association
Kansas Criminal Justice Coordinating Council (2008-2011)
Kansas Peace Officers Association (2009-2011)
Kansas Sentencing Commission (2008-2011)
Kansas Reentry Policy Committee (2008-2011)
Kansas Fusion Center (2010-2011)
Kansas Judicial Counsel False Claim Act Advisory Committee (2008-2011)
Kansas Law Society, University of Kansas, Board of Governors (2001-2003)
Kansas State Elections Objection Board (2008-2011)
Kansas Trial Lawyers Association, Board of Governors (2002-2004)
Missouri Association of Trial Lawyers
Missouri Bar Association
National Association of Attorneys General (2008-2011)
       Executive Committee (2009)
       Chair, Midwest Region (2009)
       Vice-Chair, Midwest Region (2008)
       Health and Public Safety Committee (2010-2011)
       State-Federal Task Force on Mortgage Enforcement (2010-2011)
       Consumer Protection Working Group (2010-2011)
       Society of Attorneys General Emeritus (2011)
United States District Court, District of Kansas, Bench-Bar Committee
United States District Court, District of Kansas, Magistrate Screening Committee (2002)
Wyandotte County Bar Association
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10. Bar and Court Admission:

 a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership. Kansas, 1993 Missouri, 1994 (inactive as of 2005)

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1996 United States Court of Appeals for the Tenth Circuit, 1994 United States District Court, District of Kansas, 1993 United States District Court, Western District of Missouri, 1994

In 2000, I did not renew my membership in the United States District Court for the Western District of Missouri. I am eligible for reinstatement. Otherwise, there have been no lapses in membership.

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Alvamar Country Club (1995-2011) Carleton College Alumni Association (1988-2011) Douglas County United Way, Fundraising Committee (2004-2005) Fraternal Order of Police (2008-2011) Kansas University Alumni Association (1993-2011) Lawrence Habitat for Humanity Board Member (1995-1996) Lawrence Memorial Hospital, Pediatric Unit Fundraising Committee (1999-2002) Plymouth Congregational Church, Stewardship Committee, Annual Appeal Committee, Mission, Pastor Selection, Second Century Capital Campaign, Plymouth Friends (1995-2011) Tower Foundation (2008-2011) West Hills Homes Association, President (2004-2005) William Educational Fund, Kansas University (1993-2011) YMCA of the Rockies (1994-2011) YWCA (2008-2011)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, or religion, or national origin.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

This list represents the published material I have identified through searches of my files and Internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

Stevesix.com Campaign Website (maintained by staff) (2009 - Nov. 3, 2010). Copy of existing website supplied. I do not have copies of archived versions of past website content.

Steve Six Facebook Account (maintained by staff) (Apr. 9, 2009 - Nov. 3, 2010). Copy supplied.

SteveSixAG Twitter Account (maintained by staff) (Feb. 8, 2010 – Oct. 6, 2010). Copy supplied.

"Budget Cuts Pose Serious Threat to Public Safety," Kan. Trooper Mag. (Summer 2010). Copy supplied.

"Working to Save Families From the Meth Epidemic," Kan. Trooper Mag. (Winter 2009). Copy supplied.

"Budget Cuts Could Weaken Public Safety," Kan. Trooper Mag. (Spring 2009). Copy supplied.

"Arizona v. Gant, Guidance Regarding Car Searches Incident to Arrest," Kan. Trooper Mag. (Summer 2009). Copy Supplied.

"Letter: Attorney General Six Supports Adrian," Newton Kansan, Oct. 25, 2008. Copy supplied.

"Identity Theft Threatens All Kansans, but We Can Help," Kan. Trooper Mag. (Fall 2008). Copy supplied.

"A Safe Internet," Hutchinson News, Mar. 7, 2008. Copy supplied.

"Introduction to Attorney General Steve Six," Kan. Trooper Mag. (Spring 2008). Copy supplied.

"New Attorney General Steve Six, Setting High Standards," Kan. Peace Officer Mag. (Spring 2008). Copy supplied.

"Lawsuits Against Municipalities: Notice of Claim Under KSA 12-105b," Kan. Trial Law. Ass'n J. 16, 2005. Copy supplied.

"A Primer For Handling A Defective Tire Case: The Plaintiff's View," Vol. Kan. Trial Law. Ass'n J. 10, May 2004. Copy supplied.

"Mandatory Malpractice Insurance Disclosure: Is the Time Right for Kansas," J. Kan. Bar Ass'n (Mar. 2003). Copy supplied.

Steve Six & Steve Bough, "The Third Restatement of Products Liability: New Requirement of a Reasonable Alternative Design a Radical Change in the Law," 22 Kan. Trial Law. Ass'n J. 3, Jan. 1999. Copy supplied.

Lynn R. Johnson, Stephen N. Six, Patrick A. Hamilton, "Expert Testimony in Federal Court: Frye, Daubetr, and Joiner," ALI-ABA Course of Study Materials (for speech delivered by Lynn Johnson), Feb. 12, 1998. Copy supplied.

Lynn R. Johnson, Stephen N. Six, Patrick A. Hamilton, "Deciphering Daubert: Daubert's Limitations are Obvious in the Opinion's First Sentence: '[W]e are Called Upon to Determine the Standard for Admitting Expert Scientific Testimony...'," Trial (Nov. 1997). Copy supplied.

Additionally, while I served as Attorney General, my office issued, in hard copy and/or online, a number of short publications on issues such as consumer protection and personal safety. I did not have any direct role in the drafting, editing, or publication of these materials, but they were issued under my name, in my official capacity.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the

name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

This list represents the reports, memoranda and policy statements I have identified through searches of my files and Internet databases. I have tried my best to list all such documents to which I contributed, although there may be some that I have not been able to identify or locate.

The reports listed below from the Kansas Attorney General's office were prepared by others under my supervision, with little, if any direct involvement by me. The report to the Kansas Supreme Court was prepared by me and reflects the views of the committee appointed by the Kansas Bar Association to study the issue.

Kansas Child Death Review Board Annual Report (2010). Available at http://www.ksag.org/files/Final 2010 Annual Report with 2008 data.pdf.

Kansas Attorney General's Racial Profiling Complaint Reports (2009). Available at http://www.ksag.org/files/2010 Racial Profiling chart.pdf.

KOMA/KORA Complaints Received By the Attorney General's Office Report Pursuant K.S.A. 2009 Supp. 75-753 (2010). Available at http://www.ksag.org/files/2010 AG KOMA-KORA Report.pdf.

Kansas Attorney General's Office Report on Counties Reporting KOMA or KORA Complaints (2010). Available at http://www.ksag.org/files/2010_County_KOMA-KORA_report.pdf.

Kansas Attorney General's Annual Report (2010). Copy supplied.

Kansas Attorney General's Consumer Protection Division Annual Report (2010). Available at http://www.ksag.org/files/2010 Fiscal Year Report 2.pdf.

Kansas Attorney General's Conceal Carry Report (2010). Available at http://www.ksag.org/files/media/concealed-carry/FY 2010 Annual Report.pdf.

Kansas Attorney General's Abuse, Neglect & Exploitation Unit Report (2010). Available at http://www.ksag.org/files/2009-2010 ANE Annual Report.pdf.

Essential Elements and Standards of Batterer Intervention Programs, Kansas Office of the Attorney General (May 27, 2009). Available at http://www.ksag.org/files/BIP_Standards_Revised_12_14_09.pdf.

Silver Alert Media Guide, Kansas Office of the Attorney General (2009). Available at http://www.ksag.org/files/MediaSilverAlert.pdf.

Silver Alert Law Enforcement Policy, Kansas Office of the Attorney General (2009). Available at http://www.ksag.org/files/SilverAlert.pdf.

Silver Alert Protocol, Kansas Office of the Attorney General (2009). Available at http://www.ksag.org/files/SilverAlertProtocol.pdf.

Kansas Child Death Review Board Annual Report (2009). Available at http://www.ksag.org/files/Final.pdf.

Kansas Crime Victims Compensation Board Annual Report (2009). http://www.ksag.org/files/CVCB_ANNUAL_REPORT_09_FINAL.pdf.

Kansas Attorney General's Racial Profiling Complaint Reports (2009). Available at http://www.ksag.org/files/2009 Profiling Results 3 29 2010.pdf.

KOMA/KORA Complaints Received By the Attorney General's Office Report Pursuant K.S.A. 2009 Supp. 75-753 (2009). Available at http://www.ksag.org/files/2009korakomacomplaintstoattomeygeneral.PDF.

Kansas Attorney General's Office Report on Counties Reporting KOMA or KORA Complaints (2009). Available at http://www.ksag.org/files/2009korakomacountyreport.PDF.

Governor's Grants Program "Creating S.A.F.E. Communities" Annual Report (2009). Copy supplied.

Kansas Attorney General's Annual Report (2009). Copy supplied.

Kansas Attorney General's Consumer Protection Division Annual Report (2009). Available at

http://www.ksag.org/files/2009 Fiscal Year Consumer Report 2.pdf.

Kansas Attorney General's Conceal Carry Report (2009). Available at http://www.ksag.org/files/2009 Annual Report - Signed.pdf.

Kansas Attorney General's Abuse, Neglect & Exploitation Unit Report (2009). Available at http://www.ksag.org/files/ANE_Annual Report 1-8-10 Final.pdf.

Model Law Enforcement Policy on Stalking, Kansas Office of the Attorney General (July 24, 2008). Available at http://www.ksag.org/files/shared/Model.Stalking.Policy.PDF.

Kansas Crime Victims Compensation Board Annual Report (2008). Available at http://www.ksag.org/files/CVCB ANNUAL REPORT 2008.pdf.

Kansas Attorney General's Abusc, Neglect & Exploitation Unit Annual Report (2008). Available at http://www.ksag.org/files/ANE Annual Report 1-8-10 Final.pdf.

Kansas Attorney General's Conceal Carry Report (2008). Available at http://www.ksag.org/files/shared/CC.AnnualReport.08.pdf.

Kansas Attorney General's Consumer Protection Division Annual Report (2008). Available at http://www.ksag.org/files/ConsumerAnnualReport2008.pdf.

Kansas Child Death Review Board Annual Report (2008). Available at http://www.ksag.org/files/shared/2008%20SCDRB%20AR.pdf.

Kansas Attorney General's Racial Profiling Complaint Reports (2008). Copy supplied.

KOMA/KORA Complaints Received By the Attorney General's Office Report Pursuant K.S.A. 2009 Supp. 75-753 (2008). Available at http://www.ksag.org/files/shared/KOMA.KORA.complaints08.pdf.

Kansas Attorney General's Office Report on Counties Reporting KOMA or KORA Complaints (2008). Available at http://www.ksag.org/files/shared/KORA.KOMA.Counties08.pdf.

Governor's Grants Program "Creating S.A.F.E. Communities" Annual Report (2008). Copy supplied.

Report to the Kansas Supreme Court on Attorneys' Insurance Disclosure, Kansas Bar Association (Jan. 2005). Copy supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials. Copy supplied.

This list represents the testimony, official statements, and other communications relating to matters of public policy or legal interpretation that I have identified through searches of my files and Internet databases. I have tried my best to list all such documents to which I contributed, although there may be some that I have not been able to identify or locate.

Letter to Assistant Secretary of the Interior for Indian Affairs on the fee-to-trust application of the Wyandotte nation of Oklahoma (Sept. 13, 2010). Copy supplied.

National Association of Attorneys General Letter to Backpage.com urging efforts to crack down on online human trafficking (Sept. 21, 2010). Copy supplied.

National Association of Attorneys General Letter to Craigslist.com urging efforts to combat online human trafficking (Aug. 24, 2010). Copy supplied.

Letter to United States Attorney General Eric Holder on the lawsuit filed by the United States against the State of Arizona over immigration laws (July 14, 2010). Copy supplied.

National Association of Attorneys General Letter to the Federal Trade Commission on the Telemarketing Sales Rule-Debt Relief Amendments Matter No. R411001 (July 6, 2010). Copy supplied.

National Association of Attorneys General Letter to Senators Leahy and Sessions on Secure and Responsible Drug Disposal Act of 2010, S. 3397 (June 25, 2010). Copy supplied.

National Association of Attorneys General Letter to Topix.com urging more consumer friendly Internet procedures to monitor abusive posts (May 13, 2010). Copy supplied.

National Association of Attorneys General Letter to Representatives Conyers, Waxman, Smith, and Barton on Secure and Responsible Drug Disposal Act of 2009, H.R. 1359 (May 12, 2010). Copy supplied.

National Association of Attorneys General Letter to Senators Leahy and Sessions supporting confirmation of Attorney General Alicia Liamtiaco of Guam (Apr. 15, 2010). Copy supplied.

Letter to Kansas Senator Morris on restoring funding for a contract with Correct Care Solutions, which conducted evaluations of sexually violent predators eligible for parole (Apr. 15, 2010). Copy supplied.

Joint Statement National Association of Attorneys General on Topix on Internet issues (Apr. 9, 2010). Copy supplied.

National Association of Attorneys General Letter to the Federal Trade Commission on Mortgage Assistance Relief Services Rulemaking, Rule R911003 (Apr. 5, 2010). Copy supplied.

Testimony before the Kansas Senate Judiciary Committee supporting Senate Concurrent Resolution 1611, a proposed ballot initiative on gun ownership rights (Mar. 20, 2010). Copy supplied.

Written testimony before the Kansas Senate Judiciary Committee on HB 2517, supporting domestic violence prosecutions (Mar. 15, 2010). Copy supplied.

National Association of Attorneys General Letter to United States House of Representatives Supporting S.1147 Prevent All Cigarette Trafficking Act of 2009 (Mar. 12, 2010). Copy supplied.

National Association of Attorneys General Letter to United States Senate Supporting S.1147 Prevent All Cigarette Trafficking Act of 2009 (Mar. 9, 2010). Copy supplied.

Written testimony before the Kansas Senate Judiciary Committee on SB 456 supporting the Robo-Call Privacy Act (Feb. 12, 2010). Copy supplied.

Written testimony before the House Judiciary Committee on HB 2568 supporting changes in the Durable Power of Attorney Act (Feb. 9, 2010). Copy supplied.

Letter to Speaker of the House Nancy Pelosi and Majority Leader Harry Reid on the Patient Protection and Affordable Care Act (Jan. 11, 2010). Copy supplied.

National Association of Attorneys General Letter to Federal Trade Commission on Free Annual File Disclosures Rule No. R411005 (Dec. 7, 2009). Copy supplied.

National Association of Attorneys General Letter to Senators Kohl and Hatch, Support for the Discount Pricing Consumer Protection Act (S. 148) (Oct. 27, 2009). Copy supplied.

National Association of Attorneys General Letter to Federal Trade Commission on the Telemarketing Sales Rule-Debt Relief Amendments Matter No. R411001 (Oct. 23, 2009). Copy supplied.

National Association of Attorneys General Letter to Senators Tom Harkin and Mike Enzi supporting Keeping Parents and Communities Engaged Act (Oct. 2, 2009). I do not have a copy of this letter.

National Association of Attorneys General Letter to Senators Patrick Leahy and Jeff Sessions supporting Crime Victims Fund Preservation Act of 2009 (Sept. 23, 2009). Copy supplied.

National Association of Attorneys General Letter to Representatives Bono-Mack and Representative Barrow supporting Informed P2P User Act (Aug. 25, 2009). Copy supplied.

National Association of Attorneys General Letter to Health and Human Services Secretary Kathleen Sebelius on nursing home evaluations (Aug. 20, 2009). Copy supplied.

National Association of Attorneys General Letter to the Federal Trade Commission supporting Used Car Rule Regulatory Review, Matter No. P087604 (June 15, 2009). Copy supplied.

National Association of Attorneys General Letter to Attorney General Eric Holder, Jr. on the Higher Education Opportunity Act and requesting support for school loan repayment for prosecutors (Apr. 29, 2009). Copy supplied.

National Association of Attorneys General Letter to Senators Mikulski and Shelby and Representatives Mollohan and Wolf on counterfeiting and piracy of intellectual property (Apr. 25, 2009). Copy supplied.

National Association of Attorneys General Letter to Senators Dorgan and Barrasso and Representatives Rahall and Hastings expressing concern with the decision of the United States Supreme Court in *Carcieri v. Salazar* (Apr. 24, 2009). Copy supplied.

National Association of Attorneys General Letter the Federal Trade Commission on preemption of state and local authority in the area of telecommunications policy (Apr. 1, 2009). Copy supplied.

Letter to Kansas State Senate Leadership opposing changes to Kansas' death penalty law (Mar. 12, 2009). Copy supplied.

Written testimony before the Kansas Senate Judiciary Committee on S.B. 44, the Kansas False Claims Act (Mar. 10, 2009). Copy supplied.

Written testimony before the Kansas Senate Judiciary Committee on S.B. 208, opposing the abolition of the death penalty (Feb. 26, 2009). Copy supplied.

National Association of Attorneys General Letter to President Barack Obama on the Office of the Comptroller of the Currency's Interpretation of the National Bank Act (Feb. 25, 2009). Copy supplied.

National Association of Attorneys General Letter to the Leadership of Congress expressing concern over cuts in the Edward Byrne Justice Assistance Grants (Feb. 4, 2009). Copy supplied.

National Association of Attorneys General Letter to members of Congress supporting the confirmation of Ken Salazar as Secretary of the Interior (Jan. 14, 2009). I do not have a copy of this letter.

National Association of Attorneys General Letter to Senators Leahy and Specter supporting the confirmation of Eric Holder as Attorney General (Jan. 14, 2009). Copy supplied.

National Association of Attorneys General Letter to Senators Lieberman and Collins supporting the confirmation of Janet Napolitano as Secretary of the Department of Homeland Security (Jan. 13, 2009). Copy supplied,

Letter to Kansas Racing and Gaming Commission in response to a request for review of three legislators appearing in a promotional video for a casino (Nov. 2008). Copy supplied.

State Attorneys General, Craigslist, and the National Center for Missing and Exploited Children Joint Statement on Craigslist safety improvements (Oct. 30, 2008). Copy supplied.

National Association of Attorneys General Letter to Senators Reid and McConnell supporting the Free Flow of Information Act (S. 2035) (June 23, 2008). Copy supplied.

National Association of Attorneys General Letter to Senators Inouye and Stevens and Representatives Dingell and Barton supporting HR4040 on toxic chemicals in toys (May 28, 2008). Copy supplied.

National Association of Attorneys General Letter to Senators Leahy, Specter, Kohl and Hatch and Representatives Conyers and Smith supporting the Discount Pricing Consumer Protection Act (S.2261) (May 14, 2008). Copy supplied.

Letter to the Assistant Secretary of the Interior for Indian Affairs on the fee-to-trust application of the Wyandotte Nation of Oklahoma (Apr. 4, 2008). Copy supplied.

National Association of Attorneys General Letter to Representatives Pelosi, Hoyer, Boehner, and Blunt supporting Foreign Intelligence Surveillance Act Amendments Act of 2007 (Mar. 4, 2008). Copy supplied.

National Association of Attorneys General Letter to the Leadership of Congress urging restoration of grant funds for law enforcement programs funded by Edward Byrne Justice Assistance Grants (Mar. 3, 2008). Copy supplied.

Written testimony before the Kansas Senate Ways and Means Committee on SB 524 supporting the Crime Victims Compensation Board (Feb. 12, 2008) (erroneously labeled as Feb. 12, 2008). Copy supplied.

Letter to Nebraska Attorney General Jon Bruning about the Kansas v. Nebraska & Colorado lawsuit (Feb. 8, 2008). Copy supplied.

Attorney General Opinions

Copies are available on-line at http://ksag.washburnlaw.edu/opinlist/index.htm.

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Opinion No. 2010-19-County/City Tax Issues (Dec. 29, 2010)
Opinion No. 2010-18-Gambling Devices (Nov. 15, 2010)
Opinion No. 2010-17-Open Records Act (July 1, 2010)
Opinion No. 2010-16- Ad Valorem Tax Levy for Financing Costs of Ancillary
    School Facilities (June 25, 2010)
Opinion No. 2010-15-Records Division of Vehicles (June 25, 2010)
Opinion No. 2010-14- Register of Deeds Technology Fund (June 25, 2010)
Opinion No. 2010-13-Healing Arts Licensure (June 6, 2010)
Opinion No. 2010-12- Intoxicating Liquors and Beverages (June 16, 2010)
Opinion No. 2010-11-Law Enforcement Training Center Qualifications (May 12,
Opinion No. 2010-10-Contractual Obligations of Defense Counsel (Apr. 7, 2010)
Opinion No. 2010-9-Dispute Resolution Confidentiality (Mar. 29, 2010)
Opinion No. 2010-8-Pet Animal Act (Mar. 29, 2010)
Opinion No. 2010-7- Licensing Lodging Establishments and Collecting Civil
   Penalties (Feb. 24, 2010)
Opinion No. 2010-6-Vocational Education Governing Body (Feb. 23, 2010)
Opinion No. 2010-5-Social Welfare, Information Concerning Applicants For and
   Recipients of Assistance (Feb. 23, 2010)
Opinion No. 2010-4-Restriction of Legislative Power by Limiting Legislative
   Consideration of Proposed Bills Regarding Mandated Health Insurance
   Coverage (Feb. 22, 2010)
Opinion No. 2010-3-Open Records Act (Feb. 11, 2010)
Opinion No. 2010-2-Legal Publications (Jan. 14, 2010)
Opinion No. 2010-1-Terms Convention and Tourism Committee (Jan. 5, 2010)
Opinion No. 2009-23-State Lottery Issues (Nov. 25, 2009)
Opinion No. 2009-22-Open Meetings Act (Oct. 28, 2009)
Opinion No. 2009-21-Open Meetings Act (Sept. 23, 2009)
Opinion No. 2009-19-Uniform Commercial Code (Sept. 16, 2009)
Opinion No. 2009-20- Concealed Weapon Issues (Sept. 16, 2009)
Opinion No. 2009-18-Open Records Act (Aug. 17, 2009)
Opinion No. 2009-17-Petitions/Local Election Issues (Aug. 12, 2009)
Opinion No. 2009-16- Statutory Transfers of Funds to Health Care Stabilization
   Fund (July 29, 2009)
Opinion No. 2009-15-Redevelopment Districts (July 29, 2009)
Opinion No. 2009-14-Open Records Act (July 9, 2009)
Opinion No. 2009-13- National Association of State Workforce Agencies
   (NASWA) (June 9, 2009)
Opinion No. 2009-12-Vacating Roads (May 5, 2009)
Opinion No. 2009-11-Public Bidding/Contracts (Apr. 30, 2009)
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Opinion No. 2009-10- Lottery Gaming Facility Review Board (Apr. 30, 2009)

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Opinion No. 2009-9-Tax Levy County Commission/Hospital Board (Mar. 11,
Opinion No. 2009-8- Property Tax Exemption for Utilities Located Out-of-State
   (Feb. 27, 2009)
Opinion No. 2009-6-Mortgage Registration Issues-Taxation (Feb. 12, 2009)
Opinion No. 2009-7- Conservation Reserve Program (CRP) Payments (Feb. 12,
Opinion No. 2009-5- Kansas Home Inspectors Professional Competence and
   Financial Responsibility Act (Feb. 11, 2009)
Opinion No. 2009-4-Kansas Healing Arts Act (Jan. 26, 2009)
Opinion No. 2009-2-Kansas Constitution, One Subject Rule (Jan. 23, 2009)
Opinion No. 2009-3-Powers of Recreation Commission (Jan. 23, 2009)
Opinion No. 2009-1-Taxation Issues (Jan. 13, 2009)
Opinion No. 2008-25-Sales Tax Implementation (Dec. 10, 2008)
Opinion No. 2008-24-Zoning Issues (Dec.10, 2008)
Opinion No. 2008-23-Mayoral Appointments to Boards (Nov. 3, 2008)
Opinion No. 2008-22-Open Meetings (Sept. 29, 2008)
Opinion No. 2008-21-Sentencing (Sept. 18, 2008)
Opinion No. 2008-20-Child Care Facilities (Sept. 2, 2008)
Opinion No. 2008-19-Consolidation of School Districts (Aug. 27, 2008)
Opinion No. 2008-18-Expanded Lottery Act (June 30, 2008)
Opinion No. 2008-15-Oath of Office, Local Officials (June 26, 2008)
Opinion No. 2008-16-Offender Registration (June 26, 2008)
Opinion No. 2008-17-Expanded Lottery Act (June 20, 2008)
Opinion No. 2008-14-Sentencing-Multiple Crimes (June 16, 2008)
Opinion No. 2008-13- Regulation of Dentists and Dental Hygienists (June 3,
Opinion No. 2008-12- Taxation--Newly Constructed Residential Property (Apr.
   25, 2008)
Opinion No. 2008-11-Security Cameras in Motor Vehicle Department (Apr. 23,
Opinion No. 2008-9-School Unification Act Public Bid Requirements (Apr. 22,
   2008)
Opinion No. 2008-10-Ambulance Service Taxing District (Apr. 22, 2008)
Opinion No. 2008-8-Expanded Lottery Act (Apr. 16, 2008)
Opinion No. 2008-6-Healing Arts and Emergency Medical Services Licensure
   (Mar. 31, 2008)
Opinion No. 2008-7-Cost of Transport for Mentally III (Mar. 31, 2008)
Opinion No. 2008-5-Expanded Lottery Act (Mar. 6, 2008)
Opinion No. 2008-4 - Use of Electronic Signatures (Feb. 25, 2008)
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d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

This list represents the presentations I have identified by thoroughly searching my memory and electronic and paper records. However, as Attorney General I frequently appeared at events and made brief remarks, introduced speakers or handed out awards. For many of these events, I do not recall the date or location of the event and I did not prepare remarks. These events, therefore, may not be reflected below.

Jan. 28, 2011

Southwest Bar Association, speech about the First Amendment and protecting service members' families at funeral protests. Dodge City, Kansas. Presentation slides supplied.

Jan. 10, 2011

Rotary Club, speech about the First Amendment and protecting service members' families at funeral protests. Lawrence, Kansas. I used the same materials as supplied for the Jan. 28, 2011 event.

Dec. 16, 2010

Kansas Bureau of Investigation, speech at New Agent Graduation about integrity and character. Topeka, Kansas. I have no notes, transcript or recording. The Kansas Bureau of Investigation is located at 1620 Southwest Tyler Street, Topeka, Kansas 66612.

Dec. 9, 2010

Leavenworth County Bar Association, speech about being a lawyer. Basehor, Kansas. I have no notes, transcript or recording. Todd Thompson is the President of the Leavenworth County Bar Association. Mr. Thompson's address is, Leavenworth County Attorney, 601 South 3rd, Suite 3069, Leavenworth, Kansas 66048.

Dec. 6, 2010

American Bar Association, Health Law Section, speech about Medicaid fraud prosecutions. Washington, D.C. Presentation slides supplied.

Nov. 18, 2010

Society of Human Resources Management, speech about consumer protection. Topeka, Kansas. I have no notes, transcript or recording. The address of the Society of Human Resources Management is P.O. Box 2006, Topeka, Kansas 66601.

Oct. 28, 2010

Kansas Sheriffs Association, speech about my work with sheriffs. Topeka, Kansas. I have no notes, transcript or recording. The address of the Kansas Sheriff's Association is P.O. Box 1853, Salina, Kansas 67402.

Oct. 26, 2010

Safe Homes, speech about domestic violence. Winfield, Kansas. I have no notes, transcript or recording, but press coverage is supplied. The event took place at the Winfield Chamber of Commerce, 123 East 9th Avenue, Winfield, Kansas 67156.

Oct. 25, 2010

Rotary Club of Overland Park, Attorney General campaign debate. Overland Park, Kansas. I have no transcripts, recordings or notes, but press coverage is supplied. The address of the Rotary Club of Overland Park is P.O. Box 7558, Overland Park, Kansas 66207.

October 22, 2010

March to Action, remarks on domestic violence, Topeka, Kansas. I have no notes, transcript or recording, but press coverage is supplied. The event was sponsored by the YCWA, which is located at 225 SW 12th Street, Topeka, Kansas 66612.

Oct. 19, 2010

Kansas Association of Broadcasters, Attorney General campaign debate. Wichita, Kansas. Video available at http://www.youtube.com/watch?v=P6OKImYn5fg; http://www.youtube.com/watch?v=JjK1TKwntqc; http://www.youtube.com/watch?v=L3cw1blyMp4; http://www.youtube.com/watch?v=KkuOeNQfnQ.

Oct. 16, 2010

Wyandotte County Third Saturday Democratic meeting. I have no notes, transcript or recording. The address of the Wyandotte County Democratic Party is 5000 State Avenue, Kansas City, Kansas 66102.

Oct. 12, 2010

Wichita Bar Association, speech about the accomplishments of the attorney general's office. I have no notes, transcript or recording, but press and WBA coverage is supplied. Wichita, Kansas. The Wichita Bar Association is located at 225 North Market, Suite 200, Wichita, Kansas 67202.

Oct. 6, 2010

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Washington, D.C. I have no notes, transcript or recording. The event took place at Dickstein Shapiro, 1825 Eye Street NW, Washington DC 20006.

Oct. 1, 2010

Topeka Bar Association, speech about the accomplishments of the attorney general's office. Topeka, Kansas. I have no notes, transcript or recording, but press coverage is available at http://www.youtube.com/watch?v=kupDIXi813Q. The Topeka Bar Association is located at 534 South Kansas Avenue, Suite 1130, Topeka, Kansas 66603.

Sept. 23, 2010

Wichita Crime Commission, Attorney General campaign debate. Wichita, Kansas. Video available at http://www.youtubc.com/watch?v=FJGkYO-jpWE; http://www.youtubc.com/watch?v=8VAYmISjVkc; http://www.youtubc.com/watch?v=8VAYmISjVkc; http://www.youtubc.com/watch?v=DBulB9WRxOs&feature=related; http://www.youtubc.com/watch?v=VPdkRd8vQI&feature=related; http://www.youtubc.com/watch?v=VPdkRd8vQI&feature=related.

Sept. 22, 2010

Kansas Building Trades Meeting, speech about the accomplishments of the attorney general's office. Emporia, Kansas. I have no notes, transcript or recording. The event was sponsored by the UA Local 441 which is located at 1330 East First Street North, Suite 115, Wichita, Kansas 67214.

Sept. 21, 2010

Kansas Association of Chiefs of Police, speech about how law enforcement can work together. I have no notes, transcript or recording. Topeka, Kansas: The address of the Kansas Association of Chiefs of Police is P.O. Box 780630, Wichita, Kansas 67278.

Sept. 16, 2010

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Kansas City, Missouri. I have no notes, transcript or recording. The event took place at Stueve Siegel Hanson, 460 Nichols Road, Suite 200, Kansas City, Missouri 64112.

Sept. 15, 2010

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Austin, Texas. I have no notes, transcript or recording. The event took place at the Driskill Hotel, 604 Brazos Street, Austin, Texas 78701.

Sept. 14, 2010

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Lawrence, Kansas. I have no

notes, transcript or recording. The event took place at The Oread, 1200 Oread Avenue, Lawrence, Kansas 66044.

Sept. 11, 2010

Memorial Speech to Recognize and Remember 9-11 to the general public, Leavenworth, Kansas. I have no notes, transcript or recording but press coverage is supplied. The Veterans of Foreign Wars of George Edward White Post 56 sponsored the memorial and is located at 523 Cherokee Street, Leavenworth, Kansas 66048.

Sept. 6, 2010

IBEW Labor Day Parade, Capitol, speech about the accomplishments of the attorney general's office. Topeka, Kansas. I have no notes, transcript or recording but IBEW coverage is supplied. The IBEW Local 304 is located at 3906 Northwest 16th, Topeka, Kansas 66618.

Sept. 4, 2010

Ride For Their Lives, Child Victims Recognition, remarks about my work protecting crime victims and recognizing the importance of the group's work. Salina, Kansas. I have no notes, transcript or recording, but press coverage is supplied. The Surviving Parents Coalition, 1414 22nd Street N.W., Suite 4, Washington, D.C. 20037, sponsored the Ride.

Sept. 1, 2010

Johnson County Bar Association, about the accomplishments of the attorney general's office. Overland Park, Kansas. I have no notes, transcript or recording. The Johnson County Bar Association is located at 130 North Cherry, Suite 202, Olathe, Kansas 66061.

Aug. 27, 2010

AFL-CIO Convention, speech about issues affecting seniors/retirees and consumer protection. I have no notes, transcript or recording. The Topeka AFL-CIO is located at 1620 Northwest Gage Boulevard, Topeka, Kansas 66618.

Aug. 21, 2010

Shawnee County Democrats AFL-CIO Reception, speech about the accomplishments of the attorney general's office. I have no notes, transcript or recording. The event was coordinated by the Kansas Democratic Party, which is located at 700 SW Jackson, Suite 706, Topeka, Kansas 66603.

Aug. 18, 2010

Four Tribes meeting, remarks to tribal leaders about land trust, gaming, and enforcement of sexual predator laws. Mayetta, Kansas. I have no notes, transcript or recording. The address for the Prairie Band of Potawatomi Nation, the host tribe for the meeting, is 16281 Q Road, Mayetta, Kansas 66509.

Aug. 14, 2010

Demofest, speech about the accomplishments of the attorney general's office. Wichita, Kansas. I have no notes, transcript or recording. The event was sponsored by the Kansas Democratic Party, which is located at 700 SW Jackson, Suite 706, Topeka, Kansas 66603.

Aug. 10, 2010

Central Exchange, speech about the accomplishments of the attorney general's office. Overland Park, Kansas. I have no notes, transcript or recording. The Central Exchange is located at 6201 College Boulevard, Overland Park, Kansas 66211.

Aug. 8, 2010

Washburn University School of Law, speech about *Snyder v. Phelps.* I have no notes, transcript or recording, but press coverage is supplied. The address of Washburn University is 1700 SW College Avenue, Topeka, Kansas 66621.

Aug. 8, 2010

Shawnee County Democrats Summer Family Picnic, speech about the accomplishments of the attorney general's office. Topeka, Kansas. I have no notes, transcript or recording. The Shawnee County Democratic County Party has no physical address.

Aug. 5, 2010

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. I have no notes, transcript or recording. The event took place at Bruce Kent's home in Manhattan, Kansas.

Aug. 3, 2010

Plaza Club Group, speech about the accomplishments of the attorney general's office. Kansas City, Missouri. I have no notes, transcript or recording. The event took place at The Classic Cup Restaurant, 301 West 47th Street, Kansas City, Missouri 64112.

July 28, 2010

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Overland Park, Kansas. I have no notes, transcript or recording. The event took place at Polsinelli Shughart, 6200 College Boulevard, Suite 500, Overland Park, Kansas 66211.

July 17, 2010

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Santa Fe, New Mexico. I have no notes, transcript or recording. The event took place at the Coyote Café, 132 West Water Street, Santa Fe, New Mexico 87501.

July 15, 2010

Northeast Johnson County Chamber of Commerce, speech about the accomplishments of the attorney general's office. Prairie Village, Kansas. I have no notes, transcript or recording, but press coverage is supplied. The Northeast Johnson County Chamber of Commerce is located at 5800 Foxridge Drive #100, Mission, Kansas 66202.

June 29, 2010

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Lawrence, Kansas. I have no notes, transcript or recording. The event took place at Roger Walter's home.

June 22, 2010

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Olathe, Kansas. I have no notes, transcript or recording. The event took place at Greg Orman's home.

June 22, 2010

Senior Law Day, sponsored by the Extension Office and Central Plains Area Agency on Aging, presentation about issues affecting seniors and consumer protection. Wichita, Kansas. I have no notes, transcript or recording. The address for the Extension Office and Central Plains Area Agency on Aging is West River Plaza, 2622 West Central, Suite 500, Wichita, Kansas 67203.

June 16, 2010

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Topeka, Kansas. I have no notes, transcript or recording. The event took place at Senator Laura Kelly's home.

June 11, 2010

Elder Abuse Awareness, speech about issues affecting seniors and consumer protection. Wichita, Kansas. Notes supplied.

June 10, 2010

Larned Hospital event, speech about the preservation of the community hospital. Larned, Kansas. Remarks provided.

June 10, 2010

Meritrust, speech about consumer protection and the work of the attorney general's office. Wichita, Kansas. I have no notes, transcript or recording. The address for Meritrust is P.O. Box 789757, Wichita, Kansas 67278.

June 10, 2010

Kansas County and District Attorneys Association, speech about work on issues important to prosecutors and our work clearing the DNA backlog at the Kansas

Bureau of Investigation crime lab. Wichita, Kansas. I have no notes, transcript or recording. The Kansas County and District Attorneys Association is located at 1200 Southwest 10th Avenue, Topeka, Kansas 66604.

June 10, 2010

Kansas Bar Association, "Eggs & Issues," remarks about the accomplishments of the attorney general's office. Wichita, Kansas. I have no notes, transcript or recording. The Kansas Bar is located at 1200 Southwest Harrison, Topeka, Kansas 66612.

June 4, 2010

Fraternal Order of Police, speech about the accomplishments of the attorney general's office. Great Bend, Kansas. Notes supplied.

June 4, 2010

Announcement speech for campaign for attorney general. Garden City, Kansas. Remarks provided. Video excerpts available at http://www.ktka.com/videos/2010/jun/04/29762/.

June 3, 2010

Announcement speech for campaign for attorney general. Topeka, Kansas. I used the same script as provided for the June 4, 2010 event in Garden City. Video is available at: http://www2.liworld.com/videos/2010/jun/03/30956/ and http://www.voutube.com/watch?v=dB_DjwIOViY.

June 3, 2010

Announcement speech for campaign for attorney general. Johnson County, Kansas. I used the same script as provided for the June 4, 2010 event in Garden City.

June 3, 2010

Announcement speech for campaign for attorney general. Pittsburg, Kansas. J used the same script as provided for the June 4, 2010 event in Garden City.

June 3, 2010

Announcement speech for campaign for attorney general. Wichita, Kansas. I used the same script as provided for the June 4, 2010 event in Garden City.

June 3 2010

Announcement speech for campaign for attorney general. Overland Park, Kansas. Audio of my remarks is available at http://kansas.watchdog.org/3946/ag-six-announces-run-hasnt-had-time-to-read-arizona-immigration-bill/.

May 31, 2010

Penwell-Gabel Memorial, Memorial Day Ceremony, speech about the values that make our country great and recognizing the service of those who have fought to

protect those values. Topeka, Kansas. Video available at http://www.youtube.com/watch?v=dChi02ATGxU.

May 25, 2010

AFL-CIO Tri-County Labor Meeting, speech about the accomplishments of the attorney general's office. Leavenworth, Kansas. I have no notes, transcript or recording. The AFL-CIO Tri-County Labor is located at 7540 Leavenworth Road, Kansas City, Kansas 66109.

May 17, 2010

Reach Foundation, speech about issues confronting the Foundation. Merriam, Kansas. I have no notes, transcript or recording. The Reach Foundation is located at 6700 Antioch Road, #200, Merriam, Kansas 66204.

May 17, 2010

Kiwanis Club, speech about the accomplishments of the attorney general's office. Topeka, Kansas. I have no notes, transcript or recording. The Kiwanis Club meets at Jayhawk Tower, 700 Southwest Jackson, Topeka, Kansas 66603.

May 13, 2010

Democratic Attorney General Spring Policy Conference, panel discussion on the upcoming 2010 attorney general elections. Charleston, South Carolina. I have no notes, transcript or recording. The address of the DAGA is 1580 Lincoln Street, Suite 1125, Denver, Colorado 80203.

May 11, 2010

DARE Fest, Sandstone, graduation speech about remaining drug free. Kansas City, Kansas. Notes supplied.

May 8, 2010

Ellis County Bar Association, continuing legal education presentation on Using Demonstrative Evidence at Trial. Hays, Kansas. Presentation slides supplied.

May 7, 2010

Law Enforcement Memorial, speech at a ceremony to honor law enforcement and to recognize those officers who have given their lives in service to Kansas. Topeka, Kansas. Notes supplied.

May 7, 2010

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Hays, Kansas. The event took place at Mr. Norman Jeter's home.

May 4, 2010

Leavenworth County Bar Luncheon, Law Day, speech about the qualities that make a good lawyer. Leavenworth, Kansas. Notes supplied.

May 3, 2010

Douglas County Bar Luncheon, speech about important qualities of a good lawyer. Lawrence, Kansas. Notes supplied.

Apr. 28, 2010

Ask Listen Learn, speech to Cedar Creek Elementary students about Internet safety. Olathe, Kansas. I have no notes, transcript or recording, but press coverage is supplied. Ask Listen Learn is sponsored by the Century Council, which is located at 2345 Crystal Drive, Suite 910, Arlington, Virginia 22202.

Apr. 22, 2010

Crime Victims' Conference, speech about the attorney general office's work with victims of crime. Topeka, Kansas. Notes supplied.

Apr. 21, 2010

Kansas Highway Patrol Troopers Board Meeting, speech about working together on criminal issues and relevant legislation. Lawrence, Kansas. I have no notes, transcript or recording. The Kansas State Troopers Association is located at 1200 Southwest 10th, Topeka, Kansas 66604.

Apr. 13, 2010

Sheet Metal Workers luncheon, speech about consumer protection and Medicaid fraud. Kansas City, Missouri. I have no notes, transcript or recording. The Kansas City, Missouri Sheet Metal Workers is located at 2902 Blue Ridge Boulevard, #100, Kansas City, Missouri 64129.

Apr. 7, 2010

Sunflower Foundation Retreat, speech about Medicaid fraud. Lawrence, Kansas. I have no notes, transcript or recording. The Sunflower Foundation is located at 1200 Southwest Executive Drive, Suite 100, Topeka, Kansas 66615.

Mar. 10, 2010

Miami County Leadership, speech about the accomplishments of the attorney general's office. Topeka, Kansas. I have no notes, transcript or recording. Miami County Leadership is located at 1710 Industrial Park Drive, Paola, Kansas 66071.

Mar. 9, 2010

State Youth Banquet, speech about leadership qualities and community involvement. Topeka, Kansas. Notes supplied,

Mar. 9, 2010

Government Affairs and Lobbyist Breakfast, speech about the accomplishments of the attorney general's office. Topeka, Kansas. I have no notes, transcript or

recording. The event took place at the Celtic Fox Restaurant, 118 Southwest 8th, Topeka, Kansas 66603.

Mar. 8, 2010

Federal Reserve Mortgage Event, speech about reducing loan modifications and mortgage scams. Notes supplied.

Mar. 8, 2010

Overland Park Rotary Club, speech about the accomplishments of the attorney general's office. Overland Park, Kansas. I have no notes, transcript or recording. The address for the Overland Park Rotary Club is P.O. Box 7558, Overland Park, Kansas 66207.

Feb. 27, 2010

Human Trafficking Panel, speech about human trafficking to Washburn University students and the general public. Topeka, Kansas. Notes supplied.

Feb. 26, 2010

NetSmartz Workshop, remarks to elementary school students about Internet safety. Lawrence, Kansas. Notes supplied. Video available at http://www2.ljworld.com/videos/2010/feb/24/29180/.

Feb. 22, 2010

Speech to Washburn Law students about a legal career at the attorney general's office and what the office does. Topeka, Kansas. I have no notes, transcript or recording. Washburn University School of Law is located at 1700 Southwest College Avenue, Topeka, Kansas 66621.

Feb. 18, 2010

Franklin County Leadership Class, Ottawa Kansas Chamber of Commerce, speech about the accomplishments of the attorney general's office. Topcka, Kansas. I have no notes, transcript or recording. The address of the Ottawa Kansas Chamber of Commerce is 109 East 2nd, P.O. Box 580, Ottawa, Kansas 66067.

Feb. 16, 2010

NetSmartz Internet Safety Presentation, speech to elementary school students about Internet safety. Lawrence, Kansas. 1 used the same materials as supplied for the Feb. 26, 2010 NetSmartz workshop.

Feb. 4, 2010

Attorney General's Call with state government lawyers, remarks about the work of the attorney general's office. Notes supplied.

Feb. 3, 2010

Joint Law Enforcement Conference, speech about law enforcements work with the attorney general's office. Topeka, Kansas. Notes supplied.

Ian. 31, 2010

Shawnee County Bean Feed, speech about the accomplishments of the attorney general's office. Topeka, Kansas. I have no notes, transcript or recording. The event was sponsored by the Kansas Democratic Party, which is located at 700 SW Jackson, Suite 706, Topeka, Kansas 66603.

Jan. 30, 2010

Democratic Attorney General Winter Policy Conference, panel discussion on consumer protection for seniors. Key Biscayne, Florida. I have no notes, transcript or recording. The address of DAGA is 1580 Lincoln Street, Suite 1125, Denver, Colorado 80203.

Jan. 26, 2010

Kansas Health Care Association, Kansas Center for Assisted Living, speech about policy and legislative issues affecting seniors. Topeka, Kansas. I have no notes, transcript or recording. The Kansas Health Care Association is located at 117 Southwest 6th, Suite 200, Topeka, Kansas 66603.

Jan. 15, 2010

Rotary Club, Congressional Forum, sponsored by the Kansas City, Kansas Chamber of Commerce, speech about the accomplishments of the attorney general's office. Kansas City, Kansas. I have no notes, transcript or recording, but press coverage is supplied. The address of the Chamber of Commerce is 727 Minnesota Avenue, P.O. Box 171337, Kansas City, Kansas 66117.

Jan. 14, 2010

Leadership Lawrence Judicial Panel, speech about the legal system. Lawrence, Kansas. I have no notes, transcript or recording. Leadership Lawrence is located at 646 Vermont Street, Suite 200, Lawrence, Kansas 66044.

Jan. 13, 2010

Shawnee Chamber of Commerce, speech about the accomplishments of the attorney general's office. Shawnee, Kansas. I have no notes, transcript or recording, but press coverage is supplied. The Shawnee Chamber of Commerce is located at 15100 West 67th Street, #202, Shawnee Mission, Kansas 65217.

Dec. 17, 2009

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Topeka, Kansas. I have no notes, transcript or recording. The event took place at Palmer, Leatherman, White & Dalton, 2348 SW Topeka Boulevard, Topeka, Kansas 66611.

Dec. 15, 2009

Holly House Domestic Violence Shelter, speech about preventing domestic violence. Coffeyville, Kansas. Notes supplied.

Dec. 10, 2009

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Washington, D.C. I have no notes, transcript or recording. The event took place at Zaytinya, 701 9th Street NW, Washington, D.C. 20001.

Dec. 5, 2009

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Lawrence, Kansas. I have no notes, transcript or recording. The event took place at Jon Davis' home.

Dec. 1, 2009

Speech to the United Auto Workers about the accomplishments of the attorney general's office. Kansas City, Kansas. Notes supplied.

Nov. 19, 2009

Sheriffs' Conference, speech about the attorney general's work with law enforcement. Topeka, Kansas. Notes supplied.

Nov. 18, 2009

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Overland Park, Kansas. I have no notes, transcript or recording. The event took place at Jeff Anthony's home.

Nov. 16, 2009

Kansas Association of Counties, speech about the accomplishments of the attorney general's office. Topeka, Kansas. Notes supplied.

Nov. 12, 2009

Sedgwick County Chiefs of Police Meeting, speech about the attorney general's work with local law enforcement. Wichita, Kansas. Notes supplied.

Nov. 5, 2009

Kansas University Endocott Society, speech about the attorney general's office. Lawrence, Kansas. Notes supplied.

Oct. 29, 2009

Midwest Attorney General's Conference, speech about Internet safety. Overland Park, Kansas. Notes supplied.

Oct. 27, 2009

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Mission Hills, Kansas. I have no notes, transcript or recording. The event took place at Lynn Johnson's home.

Oct. 22, 2009

After School Program, speech to students about Internet safety. Topeka, Kansas. Notes and related press coverage supplied.

Oct. 22, 2009

Kansas National Guard, Red Ribbon Drug Free Fly-In, speech to students about the importance of staying drug free and a healthy lifestyle. Topeka, Kansas. Notes supplied.

Oct. 18, 2009

Chiefs-Redskins Pregame Show, panel about the Chiefs/Redskins game. Kansas City, Missouri. Notes supplied.

Oct. 17, 2009

Wyandotte County Democratic Party, Breakfast speaker about the accomplishments of the attorney general's office. Kansas City, Kansas. I have no notes, transcript or recording. The address for the Wyandotte County Democratic Party is 5000 State Avenue, Kansas City, Kansas 66102.

Oct. 15, 2009

Manhattan Downtown Rotary, speech about the accomplishments of the attorney general's office. Manhattan, Kansas. I have no notes, transcript or recording. The Downtown Rotary meets at the Holiday Inn, 1641 Anderson Avenue, Manhattan, Kansas 66502.

Oct. 8, 2009

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Lawrence, Kansas. I have no notes, transcript or recording. The event took place at my home.

Sept. 15, 2009

Consumer Protection Seminar sponsored by the Attorney General's Office, Kansas State Fair. Presentation slides supplied.

Sept. 11, 2009

Southwest Bar Association, speech about the Kansas Consumer Protection Act. Dodge City, Kansas. Notes supplied.

Sept. 9, 2009

Personal Safety Forum, Kansas University, Lawrence, Kansas. Notes supplied. Video and related news story available at

http://www2.ljworld.com/news/2009/sep/09/rapist-string-attacks-likely-spying-women-first-of/; http://www.ksn.com/news/local/story/Students-in-Manhattan-Lawrence-warned-about-rapist/cWywcWqQ7kek3-UjT6BXAg.cspx.

Aug. 27, 2009

Kansas Law Enforcement Training Center, Commencement Address, speech about their service and thanking them for choosing a career in law enforcement. Hutchinson, Kansas. Notes supplied.

Aug. 27, 2009

Consumer seminar sponsored by the Kansas Attorncy General's Office, Kansas State Fair, remarks about how Kansans can protect themselves from consumer scams and identity theft. Hutchinson, Kansas. I have no notes, transcript or recording, but press coverage is supplied. The address of the Kansas Attorney General's Office is Memorial Hall, 2nd Floor, 120 Southwest 10th Street, Topeka, Kansas 66612.

Aug. 27, 2009

Wichita Crime Commission, speech about the attorney general's work in criminal justice issues. Wichita, Kansas. I have no notes, transcript or recording. The Wichita Crime Commission is located at 125 North Market, Suite 1115, Wichita, Kansas 67202.

Aug. 26, 2009

Capitol Federal Leadership Forum, speech about leadership and ethics. Lawrence, Kansas. I have no notes, transcript or recording. The event took place at the Lied Center, 1600 Stewart Drive, Lawrence, Kansas 66045.

Aug. 25, 2009

Protect Vulnerable Adults Seminar, remarks about issues affecting seniors. Topeka, Kansas. I have no notes, transcript or recording. The event was cosponsored by the Kansas Attorney General's Office, located at Memorial Hall, 2nd Floor, 120 Southwest 10th Street, Topeka, Kansas 66612.

Aug. 18, 2009

Wichita Area Law Enforcement luncheon, speech about the attorney general office's work with the conceal carry program and prosecuting sexual predators. Wichita, Kansas. I have no notes, transcript or recording. The event took place at the Park City, Kansas Police Department, 6110 North Hydraulic Street, Park City, Kansas 67219.

July 31, 2009

Shook Hardy Bacon lunch, remarks about the work of the attorney general's office. Kansas City, Missouri. I have no notes, transcript or recording. Shook Hardy & Bacon is located at 2555 Grand Boulevard, Kansas City, Missouri 64108.

July 29, 2009

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Wichita, Kansas. I have no notes, transcript or recording. The event took place at The River City Brewery, 150 North Mosley Street, Wichita, Kansas 67202.

July 27, 2009

Johnson County Democratic Women Meeting, remarks about the accomplishments of the attorney general's office. Lenexa, Kansas. I have no notes, transcript or recording. The Johnson County Democratic Women contact is memberinfo91@yahoo.com.

July 9, 2009

Kansas Bureau of Investigation 70th Anniversary, speech to KBI agents about the attorney general's offices work with the Bureau. Topeka, Kansas. Notes supplied.

July 1, 2009

Kansas Coalition Against Sexual and Domestic Violence, "Believe It. Help Change It" Campaign kickoff event. Topeka, Kansas. I have no notes, transcript or recording, but press coverage is supplied. The address of the Kansas Coalition Against Sexual and Domestic Violence is 634 Southwest Harrison, Topeka, Kansas 66603.

June 25, 2009

Kansas Open Record Act/Kansas Open Meetings Act, remarks about the importance of open government. Topeka, Kansas. Notes supplied.

June 24, 2009

Kansas Open Record Act/Kansas Open Meetings Act, remarks about the importance of open government. Olathe, Kansas. I used the same materials supplied for the June 25, 2009 event.

June 19, 2009

Kansas County and District Attorneys Association, speech about the work of the attorney general's office in prosecuting criminals and fighting Medicaid fraud. Wichita, Kansas. Notes supplied.

June 6, 2009

DARE School Officers, remarks about integrity, character and the importance of their work. Topeka, Kansas. I have no notes, transcript or recording. The Kansas State DARE Program is administered by Jerry Tenbrink, Kansas Attorney General's Office, 120 Southwest 10th Street, Topeka, Kansas 66612.

June 5, 2009

Law Enforcement Memorial, speech about the service of law enforcement officers. Topeka, Kansas. Notes supplied.

Apr. 30, 2009

Kansas City Metropolitan Bar Association, Bench-Bar Conference, Lake of the Ozarks, Missouri, I spoke to the group about the work of the attorney general's office. Notes supplied.

Apr. 28, 2009

Spring Bank Seminar, Lawrence, Kansas, I spoke to the group about techniques for tellers and bank managers to employ in fighting financial fraud affecting seniors. Notes supplied.

Apr. 24, 2009

Batterers Intervention Board, Topeka, Kansas. I spoke to the group about domestic violence prevention. Notes supplied.

Арг. 24, 2009

Rotary Club, Kiwanis Club, Manhattan, Kansas, I spoke to the group about the accomplishments of the attorney general's office. Notes supplied.

Apr. 23, 2009

Kansas State Firefighters Association, Great Bend, Kansas, I spoke to the group about the work of the attorney general's office. I have no notes, transcript or recording. The Kansas State Firefighters Association's has no physical address, but its website is www.ksffa.com.

Apr. 21, 2009

UAW 31 Luncheon, Kansas City, Kansas, I spoke to the group about consumer protection and issues affecting retirees. I have no notes, transcript or recording. UAW Local 31 is located at 500 Kindelberger Road, Kansas City, Kansas 66115.

Apr. 16, 2009

Victims Rights Conference, Wichita, Kansas, I spoke to the group about protecting victims of crime and also gave an awards presentation. Notes and related press coverage supplied.

Apr. 10, 2009

Governor's One-Shot Turkey Hunt, One-Shot Banquet, I spoke to the group about turkey hunting and handed out awards. I have no notes, transcript or recording, but press coverage is supplied. The Governor's Office is located at 300 SW 10th Avenue, Suite 241S, Topeka, Kansas 66612.

Apr. 7, 2009

Sunflower Foundation, Lawrence, Kansas, I spoke to the group about leadership and management. I have no notes, transcript or recording. The Sunflower Foundation is located at 1200 SW Executive Dr., Suite 100, Topcka, Kansas 66615.

Apr. 2, 2009

CTIA Wireless Conference, Las Vegas, Nevada, Wireless in Everyday Life, Panel discussion about internet safety and wireless service in rural areas. Notes supplied.

Mar. 25, 2009

Kansas Children's Service League Luncheon, Topeka, Kansas, I spoke to the group about prevention of child abuse and child neglect. Notes supplied.

Mar. 24, 2009

Humane Society News Conference, Kansas City, Kansas. Notes supplied.

Mar. 24, 2009

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Topeka, Kansas. I have no notes, transcript or recording. The event took place at Woner Glenn Reeder Girard, 5611 SW Barrington Court South, Topeka, Kansas 66614.

Mar. 10, 2009

Kansas Auto Dealers Association, Wichita, Kansas, I spoke to the group about consumer issues in automobile sales. I have no notes, transcript or recording. The Kansas Auto Dealers Association is located at 731 South Kansas Avenue, Topeka, Kansas 66603.

Mar. 2 - 6, 2009

National Consumer Protection Week Remarks. Notes supplied.

Mar. 4, 2009

Kansas Arts Commission Reception, Topeka, Kansas, I spoke to the group about the importance of the arts in educating students. I have no notes, transcript or recording. The Kansas Arts Commission is located at 700 SW Jackson, Suite 1004, Topeka, Kansas 66603.

Feb. 27, 2009

Washington Days, Topeka, Kansas, I spoke to an annual gathering of the Kansas Democratic Party. Remarks provided.

Feb. 27, 2009

Crisis Intervention Training Summit, Topeka, Kansas, I spoke to the group about the development and expansion of CIT. Notes supplied.

Feb. 24, 2009

Meet & Greet event, Garden City Community College, Garden City, Kansas, I gave informal remarks on my office's work and the death penalty. I have no notes, transcript or recording, but press coverage is supplied. The address of Garden City Community College is 801 Campus Drive, Garden City, Kansas 67846.

Feb. 24, 2009

International Pancake Day 2009 Breakfast, Liberal, Kansas, I spoke to the group about how great it is to live in Kansas. Video is available at http://www.voutube.com/watch?v=m7rCa9DS3Yo.

Feb. 19, 2009

Franklin County Leadership Class, Topeka, Kansas, I spoke to the group about leadership skills, management issues and the accomplishments of the attorney general's office. I have no notes, transcript or recording. The group is sponsored by the Ottawa Kansas Chamber of Commerce, 109 East 2nd, P.O. Box 580, Ottawa, Kansas 66067.

Feb. 18, 2009

Safe Streets-Safe Home Reception, Topeka, I spoke to the group about protecting crime victims. Notes supplied.

Feb. 16, 2009

City of Liberal Leadership Training, Topeka, Kansas, I spoke to the group about leadership skills, management issues and the accomplishments of the attorney general's office. I have no notes, transcript or recording. The group is sponsored by the Liberal Chamber of Commerce, 4 Rock Island Road, Liberal, Kansas 67901.

Feb. 11, 2009

Johnson County Leadership Class, Topeka, Kansas, I spoke about leadership skills and the accomplishments of the attorney general's office. I have no notes, transcript or recording. The event took place at the Great Overland Station, 701 North Kansas Avenue, Topeka, Kansas 66608.

Feb. 11, 2009

Kansas Legislative Policy Group Day, Topeka, Kansas, I spoke to the group about the accomplishments of the attorney general's office and litigation on water issues. I have no notes, transcript or recording. The group is located at 513 S.W. Van Buren Street, Topeka, Kansas 66601.

Feb. 11, 2009

Democratic House Caucus Agenda Meeting, Topeka, Kansas. I spoke to the group about the accomplishments of the attorney general's office. I have no

notes, transcript or recording. The address of the Kansas House Democrats is 300 SW 10th Avenue, Suite 359-W, Topeka, Kansas 66612.

Feb. 6, 2009

United States Army, Command and General Staff College, Topeka, Kansas, I spoke to officers attending the Command College about the attorney general's office. I have no notes, transcript or recording. The address of the U.S. Army is 1400 Defense Pentagon, Washington, DC 20301.

Feb. 5, 2009

Attorney General Call, Topeka, Kansas, I spoke to assistant and special assistant attorney generals and other government lawyers about the attorney general's office and issues affecting government lawyers. Notes supplied.

Feb. 3, 2009

Kansas United, Topeka, Kansas, I spoke to the group about the attorney general's office and relevant legislative issues. I have no notes, transcript or recording. The group is located at 5990 SW 28th Street, Suite F, Topeka, Kansas 66614.

Feb. 3, 2009

Government Affairs and Lobbyist Breakfast Club, Topeka, Kansas, I spoke to the group about the attorney general's office. I have no notes, transcript or recording. The event took place at the Celtic Fox Restaurant, 118 SW 8th, Topeka, Kansas 66603.

Jan. 22, 2009

Kansas Highway Patrol Troopers Board, Topeka, Kansas, I updated the group on relevant legislative issues. I have no notes, transcript or recording. The Kansas State Troopers Association is located at 1200 SW 10th, Topeka, Kansas 66604.

Jan. 13, 2009

Kansas Bureau of Investigation, Advisory Board, Topeka, Kansas, I spoke to the group about some of the challenges facing law enforcement and the KBI with coming budget cuts. I have no notes, transcript or recording. The Kansas Bureau of Investigation is located at 1620 SW Tyler Street, Topeka, Kansas 66612.

Dec. 19, 2008

Kansas Law Enforcement Training Center, New Sheriff's School, Hutchinson, Kansas, I spoke to the group about their duties and about the services of the attorney general's office provides to newly elected sheriffs. Notes supplied.

Dec. 17, 2008

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Overland Park, Kansas. I have no notes, transcript or recording. The event took place at Yia Yia's Restaurant, 4701 West 119th Street, Overland Park, Kansas 66209.

Dec. 16, 2008

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Topeka, Kansas. I have no notes, transcript or recording. The event took place at Palmer, Leatherman, White & Dalton, 2348 SW Topeka Boulevard, Topeka, Kansas 66611.

Dec. 10, 2008

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Washington, D.C. I have no notes, transcript or recording. The event took place at the Rosa Mexicano, 575 7th Street NW, Washington, D.C. 20004.

Dec. 3, 2008

Mental Health Association, Wichita, Kansas, I spoke to the group about the importance of community involvement in fighting elder abuse and new legislative issues. I have no notes, transcript or recording, but press coverage is supplied. The Mental Health Association is located at 555 North Woodlawn, Suite 3105, Wichita, Kansas 67208.

Dec. 3, 2008

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Wichita, Kansas. I have no notes, transcript or recording. The event took place at Joseph Cassell's home.

Dec. 2, 2008

Steve Six for attorney general fundraising event, speech about the accomplishments of the attorney general's office. Lawrence, Kansas. I have no notes, transcript or recording. The event took place at Susan Loomis' home.

Nov. 20, 2008

Kansas Sheriffs Association Banquet, Topeka, Kansas, I spoke to the group about the sacrifices made by law enforcement and the values that make our country great. Notes supplied.

Nov. 20, 2008

Kansas Sheriffs Association Board Meeting, Topeka, Kansas, I spoke to the group about the work of the attorney general's office in prosecuting criminal cases. I have no notes, transcript or recording. The Kansas Sheriff's Association address is P.O. Box 1122, Pittsburg, Kansas 66762.

Nov. 20, 2008

Kansas Sheriffs Association Conference, Topcka, Kansas, I spoke to the group about the attorney general's office and how we partner to fight crime. I have no notes, transcript or recording. The Kansas Sheriff's Association's address is P.O. Box 1122, Pittsburg, Kansas 66762.

Nov. 13, 2008

Wichita Crime Commission, LEO Year Award, Wichita, Kansas, I recognized a law enforcement officers work and service and presented an award. Notes supplied.

Oct. 24, 2008

Board of Regents General Counsel, Topeka, Kansas, I spoke to the group about the attorney general office's work with the state universities and colleges. I have no notes, transcript or recording. The address of the Board of Regents is 1000 SW Jackson Street, Suite 520, Topeka, Kansas 66612.

Oct. 2, 2008

Kiwanis, Hays, Kansas, I spoke to the group about the attorney general's office. Notes supplied.

Oct. 2, 2008

Hays Meal Site, Hays, Kansas, I spoke to the group about issues affecting seniors and consumer protection. I have no notes, transcript or recording. The event took place at 2450 East 8th Street, Hays, Kansas 67601.

Oct. 2, 2008

Western Kansas AARP Summit, speech about consumer protection and issues affecting seniors. Hays, Kansas. Notes supplied.

Sept. 26, 2008

Remarks at fundraiser for Tom Adrian for Kansas State Legislature. Newton, Kansas. I have no notes, transcript or recording. The event took place at the Fox Ridge Conference Center, 800 South Kansas Avenue, Newton, Kansas 67114.

Sept. 26, 2008

Sedgwick County Democrats Luncheon, Wichita, Kansas, I spoke to the group about the attorney general's office. I have no notes, transcript or recording. The Sedgwick County Democratic Party's address is P.O. Box 1736, Wichita, Kansas 67201.

Sept. 24, 2008

Joint Law Enforcement Training Luncheon, Lawrence, Kansas, I spoke to the group about recidivism and criminal justice issues. Notes supplied.

Sept. 18, 2008

Topeka Bar Association, Luncheon, Topeka, Kansas, I spoke to the group about the attorney general's office. I have no notes, transcript or recording. The Topeka Bar Association is located at 534 South Kansas Avenue, Topeka, Kansas 66603.

Sept. 16, 2008

Step Up For Kids Day rally, Topeka, Kansas, I spoke to the group about the importance of early childhood education. I have no notes, transcript or recording, but press coverage is supplied. The rally was sponsored by the Kansas Children's Service League, which is located at 3545 SW 5th, Topeka, Kansas 66606.

Sept. 15, 2008

Rotary Club, Lawrence, Kansas, I spoke to the group about the attorney general's office. Notes supplied.

Sept. 12, 2008

Southwest Bar Association, Dodge City, Kansas, I spoke to the group about the attorney general's office. Notes supplied.

Sept. 11, 2008

Kansas State Fair, remarks to law enforcement on consumer protection. Hutchinson, Kansas. I have no notes, transcript or recording, but press coverage is supplied. The Kansas State Fairgrounds are located at 2000 North Poplar Street, Hutchinson, Kansas 67502.

Sept. 11, 2008

Amber Alert, Hutchinson, Kansas, I spoke to the group about the success of the Kansas Amber Alert program. I have no notes, transcript or recording. The Kansas Amber Alert is administered by the Kansas Bureau of Investigation, which is located at 1620 S.W. Tyler, Topeka, Kansas 66612.

Aug. 29, 2008

DARE Officer Training and Graduation, Salina, Kansas, I spoke to the group about character, integrity and thanked them for choosing a career in law enforcement. Notes supplied.

Aug. 25, 2008

Fight Crime: Invest in Kids, remarks with other law enforcement officials on the impact of education on reducing crime. Kansas City, Kansas. I have no transcripts, recordings or notes. The address of the national office of Fight Crime: Invest in Kids is 1212 New York Avenue NW, Suite 300 Washington, D.C. 20005.

Aug. 22, 2008

AFL-CIO Convention, Topeka, Kansas, I spoke to the group about fighting Medicaid fraud and protecting consumers. Notes supplied.

Aug. 21, 2008

Southeast Kansas Drug Task Force, Pittsburg, Kansas, I spoke to the group about fighting drugs and prosecuting criminals. I have no notes, transcript or recording.

The Southeast Kansas Drug Task Force is administered by is administered by the Kansas Bureau of Investigation, 1620 SW, Tyler, Topeka, Kansas 66612.

Aug. 21, 2008

Kansas Auto Dealers Board Meeting, Manhattan, Kansas, I spoke to the group about consumer issues in automobile sales. I have no notes, transcript or recording. Kansas Automobile Dealers Association is located at 731 South Kansas Avenue, Topeka, Kansas 66603.

Aug. 14, 2008

Rotary Luncheon, Topeka, Kansas, I spoke to the group about current issues in the attorney general's office. Notes supplied.

Aug. 12, 2008

DARE camp closing ceremony, Ottawa, Kansas, I spoke to the group about integrity, character and staying off of drugs. I have no notes, transcript or recording. The Kansas State DARE Program is administered by Jerry Tenbrink, Kansas Attorney General's Office, 120 SW 10th, Topeka, Kansas 66612.

Aug. 1, 2008

National Night Out, Wichita, Kansas, I spoke to the group about fighting crime and preventing becoming a victim of crime. Notes supplied.

July 31, 2008

Amber Alert Task Force Meeting, Topeka, Kansas, I spoke to the group about the success of the Amber Alert program in Kansas. I have no notes, transcript or recording. The Kansas Amber Alert is administered by the Kansas Bureau of Investigation, 1620 S.W. Tyler, Topeka, Kansas 66612.

July 10, 2008

NetSafeKansas Internet Safety Presentation, Topeka, Kansas. I spoke to the group about Internet safety. Notes supplied.

July 7, 2008

Salina PD Rotary Luncheon, Salina, Kansas, I spoke to the group about the attorney general's office. Notes supplied.

June 27, 2008

Convenience Store Retailers Association, Salina, Kansas, I spoke to the group about combating underage smoking, licensing issues and tobacco enforcement. I have no notes, transcript or recording. The group is located at 115 SE 7th Street, Topeka, Kansas 66603.

June 10, 2008

Kansas County and District Attorney Association Conference, Wichita, Kansas, I spoke to the group about the attorney general's office's work prosecuting criminals. Notes supplied.

June 7, 2008

Fraternal Order of Police Conference, Wichita, Kansas, I spoke to the group about criminal justice issues and relevant legislation. Notes supplied.

Tune 2, 2009

Kansas Criminal Justice Information Systems Conference, Hutchinson, Kansas, I spoke to the group about how information sharing can help fight crime. Notes supplied.

May 28, 2008

Wichita Crime Commission, Wichita, Kansas, I spoke to the group about fighting crime and handed out awards. Notes supplied.

May 28, 2008

Young Presidents Organization, Wichita, Kansas, I spoke to the group about the attorney general's office. Notes supplied.

May 22, 2008

Kansas Department of Corrections Luncheon, Topeka, Kansas, I spoke to the group about criminal justice issues. Notes supplied.

May 20, 2008

Kansas Bureau of Investigation, In-Service Training, Topcka, Kansas, I spoke to the group about our work fighting crime, the budget and challenges ahead. I have no notes, transcript or recording. The Kansas Bureau of Investigation is located at 1620 SW Tyler Street, Topcka, Kansas 66612.

May 14, 2008

Combating Elder Abuse & Financial Exploitation Summit, Olathe, Kansas, I spoke to the group about consumer protection. Notes supplied.

May 9, 2008

Law Enforcement Memorial, Capitol, Topcka, Kansas, I spoke at a ceremony recognizing law enforcement officers' service and honoring those who have given their life in service of Kansas. Notes supplied.

May 8, 2008

Joint Meeting Inns of Court, Lawrence, Kansas, I spoke to the group about the attorney general's office. Notes supplied.

May 8, 2008

Board of Education, Recognition of Kansas Schools, Brown v. Board, Topeka, Kansas, I spoke to the group about principles, character and integrity. Notes supplied.

May 7, 2008

DARE Ceremony, Eudora, Kansas, I spoke to the group about character and integrity. Notes supplied.

May 2, 2008

Long Term Care Ombudsman Conference, Capitol, Topeka, Kansas. I spoke to the group about fighting Medicaid fraud and about consumer protection. Notes supplied.

May 1, 2008

Law Day, Lyon County Bar Association, I gave the Law Day talk. Notes supplied.

Apr. 28, 2008

Crime Stoppers Conference, Topeka, Kansas, I spoke to the group about fighting crime. Notes supplied.

Apr. 25, 2008

Take Back the Night, Wichita, Kansas, I spoke to the group about the attorney general office work with crime victims. Notes supplied.

Apr. 17, 2008

Kansas Bar Association, Membership Committee, conference call, I spoke to the group on a conference call about the attorney general's office. I have no notes, transcript or recording. The Kansas Bar Association is located at 1200 SW Harrison Avenue, Topeka, Kansas 66612.

Apr. 17, 2008

Victim's Rights Conference, Topeka, Kansas, I spoke to the group about the attorney general's work with crime victims. Notes supplied.

Apr. 15, 2008

Kansas Coalition Against Sexual & Domestic Violence, Topeka, Kansas. Notes supplied.

Apr. 11-12, 2008

Governor's One-Shot Turkey Hunt, One-Shot Banquet, I spoke to the group about turkey hunting. I have no notes, transcript or recording. The address of the Governor's Office is 300 SW 10th Avenue, Suite 241S, Topeka, Kansas 66612.

Apr. 4, 2008

White Ribbon Project, Pittsburg, Kansas, I spoke to the group about domestic violence. I have no notes, transcript or recording, but press coverage is supplied. The event took place on the Commons Area at Pittsburg State University, 1701 South Broadway, Pittsburg, Kansas 66762.

Apr. 4, 2008

Chamber of Commerce, Pittsburg, Kansas, I spoke to the group about the attorney general's office and our work on domestic violence. Notes supplied.

Apr. 3, 2008

Kansas Association of Student Financial Aid Administrators, Topeka, Kansas, I spoke to the group about the attorney general's office and our work with student loan issues. Notes supplied.

Apr. 3, 2008

GaDuGi Victims Center, Lawrence, Kansas. I spoke to the group about crime victim's rights. Notes supplied. Video available at http://www2.ljworld.com/videos/2008/apr/03/17928/.

Apr. 2, 2008

Herbert Walton Bench Bar Conference, Johnson County Bar Association, Overland Park, Kansas, I spoke to bar members about the attorney general's office and discussed the Kansas Funeral Picketing statute and case law. Notes supplied.

Apr. 2, 2008

Safe Home Kick-Off, Overland Park, Kansas, Victims' Month event on domestic violence. Notes supplied.

Mar. 13, 2008

Boys and Girls Club, Topeka, Kansas, I spoke to members of the club about Internet safety. I have no notes, transcript or recording. The Boys & Girls Clubs of Topeka are located at 2150 SW Westport Drive, Suite 204, Topeka, Kansas 66614.

Mar. 13, 2008

Youth of the Year, Dillon House, Topeka, Kansas, I spoke to students and volunteers with the Boys and Girls Club about integrity and character. I have no notes, transcript or recording. The Boys & Girls Clubs of Topeka are located at 2150 SW Westport Drive, Suite 204, Topeka, Kansas 66614.

Mar. 11, 2008

Wichita Bar Luncheon, Botanica Gardens, Wichita, Kansas, I spoke to members of the Sedgwick County Bar Association about the attorney general's office. Notes supplied.

Feb. 26, 2008

Lions Club, Hays, Kansas. I spoke to the group about the work of the attorney general's office. Notes supplied.

Feb. 26, 2008

Fort Hays State University, Hays, Kansas, I spoke to students about the attorney general's office. Notes supplied.

Feb. 22, 2008

Washington Days Remarks, Topeka, Kansas, I spoke to an annual gathering of the Kansas Democratic Party about my priorities for the attorney general's office. Notes supplied.

Feb. 9, 2008

Reno County Democratic Chili Feed, speech about plans for the attorney general's office. I have no notes, transcript or recording. The Reno County Democratic Party's address is P.O. Box 622, Hutchinson, Kansas 67504.

Feb. 7, 2008

Kansas Nurses Day, Topeka, Kansas, I spoke with nurses and nursing students about the attorney general's office. Notes supplied.

Feb. 6, 2008

Kansas Joint Law Enforcement Conference, Topeka, Kansas, I spoke with law enforcement officials about the attorney general's office and provided an update on legislative issues. I have no notes, transcript or recording. The event was cosponsored by the Kansas Peace Officers Association, Kansas Association of Chiefs of Police and the Kansas Sheriffs Association. The address of the KPOA is P.O. Box 2592, Wichita, Kansas 67201.

Feb. 5, 2008

Kansas Democratic Caucus, Lawrence, Kansas, I spoke to people caucusing about changes for the attorney general's office. I have no notes, transcript or recording, but press coverage is supplied. The address of the Kansas Democratic Party is P.O. Box 1914, Topeka, Kansas 66601.

Jan. 30, 2008

Attorney General Swearing-in Ceremony, Topeka, Kansas. Notes supplied.

2007

Free State High School, Lawrence, Kansas, I spoke to students at Free State High School students about their responsibilities when they turn eighteen. I have no notes, transcript or recording. The address of Free State High School is 4700 Overland Drive, Lawrence, Kansas 66049.

2007

Hillerest Elementary, Lawrence, Kansas, I spoke to elementary school children about the judicial system. I have no notes, transcript or recording. Hillerest Elementary is located at 1045 Hilltop Drive, Lawrence, Kansas 66044.

2006

Douglas County Courthouse, Lawrence, Kansas, on several occasions I spoke to elementary students about the judicial system. I have no notes, transcript or recordings. The Douglas County Courthouse is located at 111 East 11th Street, Lawrence, Kansas 66044.

Feb. 4, 2005

Swearing-In Remarks, District Court Judge, Lawrence, Kansas. Remarks provided.

Apr. 2, 2004

Kansas City Metropolitan Bar Association, continuing legal education presentation on *Propold v. Bridgestone Firestone*. Notes provided.

Mar. 30, 2004

Kansas Bar Association, continuing legal education presentation on Taking the Defendant's Videotape Deposition and Using It at Trial. Overland Park, Kansas. Notes provided. I gave this presentation again in 2004, but I have been unable to obtain the date.

2004

Kansas Trial Lawyers Association, continuing legal education presentation on Proving Damages in Auto Accident Cases. Lawrence, Kansas. Notes provided.

May 30, 2003

Kansas Bar Association, continuing legal education presentation on Comparison on Comparison of Kansas and Missouri Medical Negligence Laws. Overland Park, Kansas. Notes supplied.

June 2, 2002

Kansas City Metropolitan Bar Association, continuing legal education presentation on Comparison of Kansas and Missouri Medical Negligence Laws. Kansas City, Missouri. I used the same materials as supplied for the 2003 Kansas Bar Association CLE.

This list represents the public service announcements I have identified by thoroughly searching my memory and electronic and paper records. However, as Attorney General I occasionally recorded PSAs for groups. For some of these PSAs, I do not recall the date or group. This list, therefore, may not include all PSAs.

2008 - 2010 Public Service Announcements (PSA)

Amber Alert training video, April 2009. Script supplied.
Amber Alert Radio, April 2009. Same script as above.
Amber Alert Video, April 2009. Same script as above.
Anti-Drug.com PSA, September 2010. Script supplied.
Drunk Driving Radio PSA, date unknown. Script supplied.
Entertainment Software Ratings Board PSA, June 3, 2009. Video supplied.
Hays, KS Identity Theft Shred-a-Thon PSA. Script supplied.
Kansas Amber Alert Wireless PSA, April 2009. Video supplied.
KORA/KOMA PSA, date unknown. Script supplied.
Netsmartz Family PSA, 2009. Video supplied.
Netsmartz Family PSA, Mar. 14, 2008. Script supplied.
Stalking Training Video, date unknown. Script supplied.
AG Steve Six and Dara Torres, AskListenLearn PSA, Aug. 10, 2010. Video available at http://www.youtube.com/watch?v=DORnfR9Ghq0.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have searched my files and Internet databases to refresh my memory in an effort to produce as complete a list of interviews as I could, but it is still possible there are some I was not able to locate.

As a candidate for Attorney General of Kansas, my campaign set up a YouTube channel with a selection of campaign ads, interviews, press conferences and new stories. These videos are available at http://www.youtube.com/user/SteveSixAG#p/u/10/HJhApxhIHck.

Roxana Hegeman, <u>Six May Have to Wait to Take Federal Bench</u>, Wichita Eagle, Mar. 11, 2011. Copy supplied.

George Diepenbrock, Steve <u>Six Discusses Phelps Funeral Protest Case after Stint as Kansas Attorney General</u>, Lawrence Journal World, Jan. 11, 2011. Video and related news story available at http://www2.ljworld.com/videos/2011/jan/11/33865/.

Press release, Office of Attorney General Steve Six, Attorney General Reports Record Consumer Protection and Medicaid Fraud Recoveries (Jan. 3, 2011). Copy supplied.

Press release, Office of Attorney General Steve Six, "Operation Homestead" Nets \$2.8 Million for Kansas Consumers in Settlement with Wells Fargo (Dec. 8, 2010). Copy supplied.

Press release, Office of Attorney General Steve Six, Kansas Child Abduction Response Team Becomes 10th in the Nation to be Certified by US Department of Justice (Nov. 23, 2010). Copy supplied.

Roxana Hegeman, <u>Vacancy Opens Up in Federal Judiciary in Kansas</u>, Associated Press, Nov. 15, 2010. Copy supplied.

Jim Salter, <u>Former Owners of US Fidelis Settle with 11 States</u>, Associated Press, Nov. 8, 2010. Copy supplied.

Roxana Hegeman, <u>Judge Tosses Out Lawsuit over Kan. Supreme Court</u>, Associated Press, Nov. 4, 2010. Copy supplied.

Six Loses AG Race, KSN.com, Nov. 3, 2010. Copy supplied.

Tim Carpenter, Schmidt Ousts Six in AG Race, Topeka Capital-Journal, Nov. 3, 2010. Copy supplied.

GOP Wins Kansas AG. Sec. of State and Treasurer Races, Eyewitness News 12, Nov. 3, 2010. Copy supplied.

John Hanna, <u>Kan. Democrats Lose 3 Statewide Incumbents</u>, Associated Press, Nov. 3, 2010. Copy supplied.

Rhonda Holman, So They Said, Wichita Eagle Blog, Oct. 31, 2010. Copy supplied.

Mike Pound, Kansas to Elect Governor. Other Statewide Officers, Joplin Globe, Oct. 31, 2010. Copy supplied.

<u>Candidate's Favorite Books: Steve Six</u>, Lawrence Public Library Book Blog, Oct. 29, 2010. Copy supplied.

State's Role in Healthcarc Reform Law Becoming Focus of Attorney General Candidates, Lawrence Journal World, Oct. 27, 2010.

Monica Springer, Six Campaigns in Emporia, Emporia Gazette, Oct. 27, 2010. Copy supplied.

Press release, Office of the Governor, Kansas Releases Strategic Plan to Combat Methamphetamine (Oct. 27, 2010). Copy supplied.

Press Conference, early release for inmates, Oct. 26, 2010. Related press coverage is listed below:

Eric Swanson, Six Critical of Sentencing Board's Plan, Wichita Eagle, Oct. 27, 2010. Copy supplied.

AG Candidates Oppose Plan to Release Inmates Early, KSN.com, Oct. 26, 2010. Video and related news story available at http://www.ksn.com/news/local/story/AG-candidates-oppose-plan-to-release-inmates-early/YkNK5TFTJ06fxMbgRh8Ntg.cspx.

<u>Kan. AG Opposes Reducing Prison Sentences</u>, Associated Press, Oct. 26, 2010. Copy supplied.

Radio Interview, Friendly Fire, Oct. 26, 2010. I have not been able to obtain a copy of the recording. Press coverage with excerpts supplied.

<u>Candidate countdown: Steve Six</u>, KSNT.com, Oct. 25, 2010. Video available at http://www.ksnt.com/search/videosearch.aspx?search=%22steve+six%22.

Attorney General Steve Six, Morning Sun, Oct. 24, 2010. Copy supplied.

David Klepper, Six, Schmidt on Ballot for Attorney General, Kansas City Star, Oct. 23, 2010. Copy supplied.

Week Without Violence Continues with Statchouse Stand, KTKA, Oct. 22, 2010. Video and related news story available at http://www.ktka.com/news/2010/oct/22/week-without-violence-continues-statchouse-stand/.

John Milburn, Federal Issues Take Spotlight in Kan. AG Race, Associated Press, Oct. 21, 2010. Copy supplied.

Rebecca Zepick, <u>Video: Fed Phelps Prays Harm for Steve Six</u>, State of the State KS, Oct. 21, 2010. Video and related news story available at http://stateofthestateks.com/2010/10/21/video-fred-phelps-prays-harm-for-steve-six-holland-henslev-and-davis-to-sign-education-pledge-today/.

Tim Carpenter, Phelps Prays A.G. is Punished, Topeka Capital-Journal, Oct. 21, 2010. Copy supplied.

<u>Chat Live with Kansas Attorney General Steve Six</u>, LJWorld.com, Oct. 20, 2010. Copy supplied.

Suzie Gilbert, Westboro Baptist Church Attacks Steve Six, wibw.com, Oct. 20, 2010. Video and related news story available at http://www.wibw.com/localnews/headlines/Westboro Baptist Church Attacks S teve Six 105395048.html.

Press release, Office of Attorney General Steve Six, Attorney General Six Pushes Backpage.com for Additional Restrictions (Oct. 19, 2010). Copy supplied.

TV interview, Stephanie Hockridge, fox4kc.com, <u>Kansas AG Reaches Settlement with Company in Veteran Burial Scam</u>, Oct. 19, 2010. Video available at http://www.fox4kc.com/wdaf-story-veteran-burial-scam-settlement-101910,0,6238762.story.

Kimber Wallace, Attorney General – Schmidt, Six Have Different Strategies for Handling Lawsuit Challenging Health Care, Manhattan Mercury, Oct. 18, 2010. Copy supplied.

Bob Beatty, The Mystery in the AG Race, Hutchinson News, Oct. 17, 2010. Copy supplied.

Candidate Survey Lawrence Journal World, Oct. 15, 2010. Copy supplied.

Candidate Survey League of Women Voters, Oct. 14, 2010. Copy supplied.

Bill Wilson, <u>Kansas Joins Foreclosure Investigation</u>, Wichita Eagle, Oct. 14, 2010. Copy supplied.

Press conference on arrest of two on solicitation charges, Oct. 13, 2010. Related press coverage supplied:

Backpage Sting Yields 2 Arrests, Topeka Capital-Journal, Oct. 14, 2010. Copy supplied.

Attorney General Steve Six Announces Pair of Electronic Solicitation Arrests, Renews Call for Backpage.com to Crack Down on Advertising, El Dorado Times, Oct. 13, 2010. Copy supplied.

Two Charged with Trying to Solicit Minors Online, Kansas City Star, Oct. 13, 2010. Copy supplied.

Maria Sudekum Fisher, <u>Kan. AG: 2 Arrested in Online Ad Investigation</u>, Associated Press, Oct. 13, 2010. Copy supplied.

Two Charged in Internet Child Prostitution Sting Operation in Wyandotte County, Wyandotte Daily News, Oct. 13, 2010. Copy supplied.

Aaron Heintzelman, "2 men charged in sex sting connected to adult services section of Backpage.com," NBC Action News (Kansas City), Oct. 13, 2010. Video available at http://www.nbcactionnews.com/dpp/news/crime/2-men-charged-in-sex-sting-connected-to-adult-scrvices-section-of-backpage.com.

"AG Pledges To Continue Fight Against Exploitation," KCTV (Kansas City), Oct. 13, 2010. Video available at http://www.kctv5.com/news/25378760/detail.html.

Steve Doocy, <u>Interview with Steve Six</u>, Fox News Network, Oct. 12, 2010. Copy supplied.

Attorney General Monitoring 'Robo' Calls, Newton Kansan, Oct. 12, 2010. Copy supplied.

Press release, Office of Attorney General Steve Six, Attorney General Six Congratulates Butler County Attorney Jan Satterfield on Being Named Prosecutor of the Year by her Peers (Oct. 11, 2010). Copy supplied.

Press release, Department of Agriculture, Arbitrator Sides with Kansas in Dispute over Republican River (Oct. 8, 2010). Copy supplied.

Press conference, Snyder v. Phelps Argument, Oct. 6, 2010. Related press coverage is listed below:

Tricia Bishop, <u>Protest's Boundaries</u>, Baltimore Sun, Oct. 7, 2010. Copy supplied.

Kansas Attorney General Comments on Funeral Protest Case, KTKA, Oct. 6, 2010. Video available at http://www.youtube.com/watch?v=d2lFqOaKyk.

Kansas Attorney General in D.C. for Phelps Supreme Court Case, LJWorld.com, Oct. 6, 2010. Video available at http://www2.ljworld.com/videos/2010/oct/06/33036/.

Lloyd Robertson, <u>Antigay Protests</u>, CTV News, Oct. 6, 2010. Transcript supplied.

Michael Doyle, Westboro's Attorney: In Court, Not Just Another Protester, McClatchy Washington Bureau, Oct. 6, 2010. Copy supplied.

Chris Matthews, <u>Supreme Court to Hear Phelps vs. Snyder</u>, Hardball, Oct. 6, 2010. Copy supplied.

Tim Carpenter, <u>Pickets on National Stage</u>, Topeka Capital-Journal, Oct. 6, 2010. Copy supplied.

Televised campaign address, KWCH. Wichita, Kansas. Video available at http://www.kwch.com/videobeta/41d8b9c4-d3ae-4c90-bf0b-18fa07f9c19a/News/Free-Airtime-Steve-Six.

Steve Kraske, The Breakfast Buzz, Newstex Web Blogs, Oct. 5, 2010. Copy supplied.

Press release, Office of Attorney General Steve Six, Kansas Attorney General, 49 AG's Argue Snyder v. Phelps (Oct. 4, 2010). Copy supplied.

TV interview, Steve Six Speaks to Topeka Lawyers, Oct. 1, 2010. Video available at http://www.youtube.com/watch?v=kupDlXi813Q.

Candidate Survey El Dorado Times, Oct. 2010. Copy supplied.

Candidate Survey Kansas City Star, Oct. 2010. Copy supplied.

Candidate Survey Lenexa Chamber of Commerce, Oct. 2010. Copy supplied.

Candidate Survey Topeka Capital-Journal, Oct. 2010. Copy supplied.

Candidate Survey Sabetha Herald, Oct. 2010. Copy supplied.

Candidate Survey Overland Park Chamber of Commerce, Oct. 2010. Copy supplied.

Candidate Survey McPherson Sentinel, Oct. 2010. Copy supplied.

Candidate Survey Salina Journal, Oct. 2010. Copy supplied.

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Press release, Office of Attorney General Steve Six, Lawmakers Should Make Cyber Crime a Priority (Feb. 27, 2008). Copy supplied.

Press conference on Cyber-Crime and Internet Training with Students, Topeka, Kansas, I spoke to the group about Internet safety, Feb. 25, 2008. Notes supplied and press coverage is listed below:

John Hanna, <u>House, Senate Begin Talks Over Bill on Coal-Fired Plants</u>, Associated Press, Feb. 25, 2008. Copy supplied.

David Klepper, <u>Cyber Crime is a Priority for New Attorney General</u>, Wichita Eagle, Feb. 25, 2008. Copy supplied.

Press release, Office of Attorney General Steve Six, Attorney General Six Urges Legislature to Crack Down on Cyber Crime (Feb. 25, 2008). Copy supplied.

John Hanna, New AG Assumes Lower Profile, Avoids Political Side of Job, Associated Press, Feb. 14, 2008. Copy supplied.

Press release, Office of Attorney General Steve Six, Aventis Pharmaceuticals Held Accountable for Defrauding Kansas Medicaid Program (Feb. 13, 2008). Copy supplied.

A Brief Biography of Stephen N. Six, Kansas' New Attorney General, Associated Press, Feb. 13, 2008. Copy supplied.

David Klepper, <u>Kansas Attorney General Hopes to Restore Stability</u>, <u>Continuity</u>, Kansas City Star, Feb. 11, 2008. Copy supplied.

James Carlson, A.G. Offers a Look Ahead, Topeka Capital-Journal, Feb. 10, 2008. Copy supplied.

Press release, Office of Attorney General Steve Six, Kansas Seeks Quick Resolution to Water Dispute (Feb. 8, 2008). Copy supplied.

John Hanna, <u>AP Newsbreak: AG's Office Subpoenaed by Tiller Grand Jury</u>, Associated Press, Feb. 7, 2008. Copy supplied.

John Hanna, Kansas AG Expects Court Battle with Nebraska over Republican, Associated Press, Feb. 7, 2008. Copy supplied.

Press release, Office of Attorney General Steve Six, Kansas to Receive Nearly \$5 Million in Merck Settlement (Feb. 7, 2008). Copy supplied.

WE Blog: Excerpts from Our Web Log, Wichita Eagle, Feb. 7, 2008. Copy supplied.

Scott Rothschild, Six Getting Settled In New Role, Lawrence Journal-World, Feb. 6, 2008. Copy supplied.

Press release, Office of Attorney General Steve Six, Gaming Statement from Attorney General Stephen Six (Feb. 1, 2008). Copy supplied.

Press release, Office of Attorney General Steve Six, Six Sworn In as Kansas Attorney General (Jan. 31, 2008). Copy supplied.

Rhonda Holman, Raise Pay of A.G., Officials, Wichita Eagle, Jan. 26, 2008. Copy supplied.

Press conference on Attorney General Announcement, Topeka, Kansas, Jan. 18, 2008. Related press coverage is listed below:

Tim Carpenter, <u>Sebelius Counts on Six</u>, Topeka Capital-Journal, Jan. 19, 2008. Copy supplied.

Quotes on Stephen Six Being Named Attorney General, Associated Press, Jan. 19, 2008. Copy supplied.

James Carlson, <u>Six Characterized as 'a Regular Guy'</u>, Topeka Capital-Journal, Jan. 19, 2008. Copy supplied.

John Hanna, Anti-Abortion Groups Split Over Six Appointment as AG, Associated Press, Jan. 19, 2008. Copy supplied.

Scott Rothschild, <u>Six Named New Attorney General: Local Judge to Replace Scandal-Tainted Morrison</u>, Lawrence Journal-World, Jan. 18, 2008. Copy supplied.

David Klepper, New Attorney General Vows to Serve with Integrity, Kansas City Star, Jan. 18, 2008. Copy supplied.

Jack Weinstein, <u>Governor Appoints New Attorney General</u>, Times Limited, Jan. 18, 2008. Copy supplied.

<u>Judge Six Named Kansas Attorney</u> General, Lawrence Journal-World, Jan. 18, 2008. Video available at http://www2.ljworld.com/videos/2008/jan/18/16876/.

John Hanna, Sebelius Names Douglas County Judge Six Attorney General, Associated Press, Jan. 18, 2008. Copy supplied.

Press release, Office of Attorney General Steve Six, Sebelius Names Judge Stephen N. Six Kansas Attorney General (Jan. 18, 2008). I have been unable to obtain a copy.

John Hanna, On Crowded Lists of Potential AGs, Biggs Ranks High, Associated Press, Dec. 18, 2007. Copy supplied.

Dan Margolies, <u>Crash Victim's Family Wins Case</u>, Kansas City Star, May 8, 2003. Copy supplied.

Tim Potter, Wesley Purkey Had a History of Committing Crimes on Parole but the State Paroled Him Again and Then the System Broke Down, Wichita Eagle, June 11, 2000. Copy supplied.

Tim Potter, Slain Teacher's Son Asks: Why?, Wichita Eagle, Apr. 13, 2000. Copy supplied.

Dan Margolies, KC Law Firm Uses CD-ROM Technology, Kansas City Star, Feb. 1, 2000. Copy supplied.

Tim Carpenter, Some Grads Sour on KU Experiences, Lawrence Journal-World, May 14, 1993. Copy supplied.

Tim Carpenter, <u>KU Students Assess Quality of Education</u>, Lawrence Journal-World, May 14, 1993. Copy supplied.

13. <u>Judicial Office</u>: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed a district court judge in Douglas County, Kansas in January 2005. I had general jurisdiction of criminal and civil cases.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

As a district court judge, I made rulings in several hundred cases which were resolved in various ways, by dismissal, summary judgment, judgment or trial. I would estimate that fifty to sixty of the criminal cases proceeded to jury trial and ten to fifteen of the civil cases resulted in a jury trial. I also had approximately 10 to 15 criminal bench trials and twenty-five to thirty civil bench trials.

i. Of these, approximately what percent were:

jury trials: 60% bench trials: 40% civil proceedings: 40% criminal proceedings: 60%

 Provide citations for all opinions you have written, including concurrences and dissents. In addition to the Memorandum Decisions listed below, I wrote short orders in cases on scheduling issues, transferring inmates, granting continuances, extending deadlines and other matters that are not listed below. These orders are not available, other than by reviewing each case I handled and doing a search for this type of order.

State v. Smith, Case No. 2007 DR 303, Memorandum Decision (Dec. 28, 2007) (denying defendant's motion to suppress)

In the matter minor child, Case No. 2007 JV 129 Memorandum Decision (Dec. 10, 2007) (denying appeal adjudicating defendant as a juvenile offender-juvenile records confidential)

Hamilton v. Kansas Dep't of Revenue, Case No. 2007 CV 180, Memorandum Decision (Dec. 3, 2007) (denying defendant's appeal of his driver's license suspension)

Miller v. Johnson, Case No. 2004 CV 704, Memorandum Decision (Nov. 19, 2007) (denying defendant's motion for a new trial)

Miller v. Johnson, Case No. 2004 CV 704, Memorandum Decision (Nov. 19, 2007) (denying plaintiff's challenge to the state tort limits)

Weingart v. Guindon, Case No. 2005 CV 404, Memorandum Decision (Nov. 2, 2007) (granting defendant summary judgment on some claims)

Weingart v. Guindon, Case No. 2005 CV 404, Mcmorandum Decision (Nov. 1, 2007) (granting defendant's motion to strike expert)

In the Matter of minor child, Case No. 2005 JV 327, Memorandum Decision (Oct. 11, 2007) (denying juvenile's request for new trial)

Miller v. Johnson, Case No. 2004 CV 704, Memorandum Decision (Sept. 17, 2007) (entering jury verdict and reducing verdict under state tort limits)

Hampton Court LLC v. Vitale, Case No. 2007 LM 1820, Memorandum Decision (Aug. 30, 2007) (interpreting Crime Free Premises provision of residential lease)

City of Eudora v. Keim, Case No. 2006 CV 630, Memorandum Decision (June 1, 2007) (denying appeal from zoning board)

Brown v. Kansas, Case No. 2007 CV 194, Memorandum Decision (May 10, 2007) (granting state's motion to dissolve writ of habeas corpus)

Vogt v. Kansas Dep't of Revenue, Case No. 2006 CV 275, Memorandum Decision (Mar. 15, 2007) (denying defendant's appeal of suspension of his driver's license)

In the Matter of minor child, Case No. 2004 JV 319, Memorandum Decision (Mar. 1, 2007) (denying juvenile's appeal of the revocation of his diversion agreement)

Dow v. Meadowlark Dev. Grp., Case No. 2006 CV 200, Mcmorandum Decision (Sept. 7, 2006) (granting defendant's motion to dismiss for defect in pre-filing notice)

State v. Richardson, Casc No. 2006 CR 768, Memorandum Decision (Sept. 1, 2006) (denying defendant's constitutional challenge to criminal statute)

In the Matter of the Marriage of Bradburn v. Bradburn, Case No. 2003 DM 399, Memorandum Decision (June 5, 2006) (post divorce decree enforcement)

In the Matter of minor child, Case No. 2005 JV 284/295, Memorandum Decision (Mar. 29, 2006) (denying defendant's request to redact pre-sentence report)

State v. Vera, Case No. 2005 CR 948, Memorandum Decision (Mar. 29, 2006) (denying defendant's suppression motion)

State v. Mejia, Case No. 2005 CR 949, Memorandum Decision (Feb. 15, 2006) (denying defendant's suppression motions)

Hunter v. The Honorable Jack A. Murphy, Case No. 2005 CV 671, Memorandum Decision (Jan. 24, 2006) (denying defendant's KSA 60-1507 motion for post conviction relief and for ineffective assistance of counsel)

In the Matter of the Marriage of Brooks v. Brooks, Case No. 1999 DM 647, Memorandum Decision (Jan. 17, 2006) (ruling on parenting plan)

Kershenbaum v. Fasbinder, Case No. 2004 CV 294, Memorandum Decision (Jan. 6, 2006) (interpreting trust provision)

Maceli v. Colllier, Case No. 2005 CV 147, Mcmorandum Decision (Dec. 30, 2005) (petition action for real estate)

In the Matter of Eric Costlow, Case No. 2005 CV 339, Memorandum Decision (Dec. 30, 2005) (denying defendant's appeal of his driver's license suspension)

In the Matter of minor child, Case No. 2004 JV 327, Memorandum Decision (Dec. 29, 2005) (denying juvenile's appeal of adjudication as offender)

Schreiber v. Keen Line Masonry, Case No. 2005 CV 016, Memorandum Decision (Dec. 21, 2005) (granting defendant's motion for summary judgment)

Fancher Enters., LLC v. Gentle Dentistry, P.A., Case No. 2004 CV 575, Memorandum Decision (Dec. 16, 2005) (denying plaintiff's motion to dismiss defendant's counterclaims)

In the Matter of Bradburn v. Bradburn, Case No. 2003 DM 399, Order Denying Motion For Reconsideration (Dec. 16, 2005) (post divorce decree enforcement)

Powell v. Bd. of Cnty. Comm'rs, Case No. 2004 CV 573, Memorandum Decision (Dec. 15, 2005) (denying defendant's motion for summary judgment)

Schreiber v. Keen Line Masonry, Case No. 2005 CV 016, Memorandum Decision (Dec. 9, 2005) (granting in part defendant's motion for summary judgment and denying in part)

State v. Morris, Case No. 2005 CR 1124, Memorandum Decision (Dec. 1, 2005) (ordering restitution)

State v. Spicher, Case No. 2005 CR 1125, Memorandum Decision (Dec. 1, 2005) (ordering restitution)

State v. Asher, Case No. 2005 CR 562, Memorandum Decision (Nov. 21, 2005) (granting defendant's motion to suppress)

In the Matter of the Parentage of minor child, Case No. 2004 DM 1038, Memorandum Decision (Nov. 18, 2005) (denying motion to reconsider custody order)

Deutsche Bank Nat'l Trust Co. v. Young, Case No. 2005 CV 082, Memorandum Decision (Nov. 16, 2005) (establishing property value after foreclosure and sale)

West Meadows Cond. Assoc. v. Davis, Case No. 2004 CV 206, Mcmorandum Decision (Nov. 16, 2005) (ordering attorney's fees and costs)

In the Matter of the Parentage of minor child, Case No. 2004 DM 1038, Memorandum Decision (Nov. 7, 2005) (establishing parenting plan)

Fancher Enter. LLC v. Gentle Dentistry, P.A., Case No. 2004 CV 575, Memorandum Decision (Nov. 7, 2005) (denying defendant's motion for summary judgment)

Root v. The Renew Group, Inc., Case No. 2005 LM 426, Memorandum Decision (Nov. 3, 2005) (denying defendant's motion for summary judgment)

City of Lawrence v. Youngquist, Case No. 2002 CV 635, Memorandum Decision (Oct. 24, 2005) (ordering punitive damages and attorney's fees)

Lawrence Athletic Club v. Cusick, Case No. 2005 LM 032, Memorandum Decision (Oct. 11, 2005) (denying plaintiff's motion to re-instate its dismissed case)

State v. Payne, Case No. 2005 CR 1216, Memorandum Decision (Oct. 4, 2005) (granting defendant's motion to suppress)

Wong v. Kong, Case No. 2005 CV 389, Memorandum Decision (Sept. 28, 2005) (denying plaintiff's motion to re-instate his case)

Checkrite v. Newman, Case No. 2005 LM 1030, Memorandum Decision (Sept. 23, 2005) (denying plaintiff's motion to re-instate its case)

Blomgren v. Kansas Dep't of Revenue, Case No. 2005 CV 229, Amended Memorandum Decision and Order for Stay (Sept. 8, 2005) (adding provision to allow parties to immediately appeal)

Mason v. Goldman, Case No. 2004 CV 719, Memorandum Decision (Sept. 2, 2005) (ordering attorney's fees)

Blomgren v. Kansas Dep't of Revenue, Case No. 2005 CV 229, Memorandum Decision (Aug. 26, 2005) (exhaustion of administrative remedies)

Rothwell v. Alkoudsi, 2004 LM 974, Mcmorandum Decision (Aug. 26, 2005) (establishing quantum merit claim)

Gramlich v. Kansas Dep't of Revenue, Case No. 2004 CV 40, Memorandum Decision (Aug. 17, 2005) (denying defendant's appeal of his driver's license suspension)

Mason v. Goldman, Case No. 2004 CV 719, Memorandum Decision (Aug. 18, 2005) (Denying defendant's motion for reconsideration)

Siltan v. Univ. of Kansas, 2004 CV 492, Memorandum Decision (July 21, 2005) (denying plaintiff's appeal of residency determination)

Rogler v. Kansas Dep't of Revenue, Case No. 2005 CV 053, Memorandum Decision (July 21, 2005)(denying defendant's appeal of his driver's license suspension)

Guindon v. Culligan, Case No. 2004 CV 714, Memorandum Decision July 20, 2005) (denying plaintiff's motion to dismiss claims and granting defendant's motion to file amended petition)

West Meadows v. Davis, Case No. 2004 CV 206, Memorandum Decision (July 6, 2005) (interpreting provision in condominium association bylaws)

Miescher v. Carson, Case No. 2005 DM 384, Memorandum Decision (June 23, 2005) (rejecting defendant's mental illness defense to a restraining order)

West Meadows v. Davis, Case No. 2004 CV 206, Memorandum Decision (June 9, 2005) (interpreting provision in condominium association bylaws)

West Meadows v. Davis, Case No. 2004 CV 206, Memorandum Decision (June 9, 2005) (canceling trial for defendant's failure to respond)

City of Lawrence v. Youngquist, Case No. 2002 CV 635, Memorandum Decision (Apr. 28, 2005) (denying request to bifurcate trial)

West Meadows v. Davis, Case No. 2004 CV 206, Memorandum Decision (Apr. 12, 2005) (granting plaintiff's motion for summary judgment)

Guindon v. Culligan, Case No. 2004 CV 714, Memorandum Decision (Mar. 14, 2005) (granting in part and denying in part defendant's motion to dismiss claims)

City of Lawrence v. Youngquist, Case No. 2002 CV 635, Memorandum Decision (Feb. 28, 2005) (ruling on parties' motion in limine)

- c. For each of the 10 most significant cases over which you presided, provide; (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - 1. City of Lawrence ex rel. Morales v. Youngquist, 2002CV635. Opinion dated Oct. 24, 2005 supplied.

Plaintiff's sued defendants for housing discrimination. Plaintiffs, an Hispanic woman and an African-American man, who otherwise were qualified to rent, were denied an opportunity to rent at defendants' apartments for the stated reason they were unmarried. Evidence at trial showed that unmarried white couples lived at the apartments. Plaintiff brought claims for housing discrimination. The jury returned a verdict in favor of plaintiffs.

Counsel:

Plaintiffs, Bruce Plenk and Max Kautsch, 16 East 13th Street, Lawrence, Kansas, 66044, 785-840-0077.

Defendants, Chris Miller, 645 Country Club Terrace, Lawrence, Kansas 66049, 785-841-2110.

2. State v. Richardson, 06CR768. Opinion dated Sept. 1, 2006 supplied.

Defendant was charged with the crime of intentionally exposing five women to a life-threatening communicable disease. It was the first prosecution in Kansas under this statute. The jury found the defendant guilty.

Counsel:

State: Amy McGowan, Assistant District Attorney, 111 East 11th Street, Lawrence, Kansas 66044, 785-832-5318.

Defendant: Thomas Johnson, Petefish, Immel, Heeb & Hird, L.L.P., 842 Louisiana Street, P.O. Box 485, Lawrence, Kansas, 785-843-0450.

3. Miller v. Johnson, 2004CV704. Opinion dated Nov. 19, 2007 supplied.

Plaintiff went to defendant for removal of a diseased right ovary. Defendant removed her healthy left ovary. After discovering the error, plaintiff's remaining diseased ovary was removed, leaving plaintiff without ovaries. The jury returned a verdict in excess of the state tort limits and plaintiff filed a constitutional challenge to the limits. I denied plaintiff's challenge and the appeal is pending before the Kansas Supreme Court.

Counsel:

Plaintiff: William Skepnek, Skepnek Law Firm, P.O. Box 442226, Lawrence, Kansas 66044, 785-856-3100.

Defendant: Bruce Keplinger, Norris & Keplinger, LLC, 6800 College Boulevard, Suite 360, Overland Park, Kansas 66211, 913-323-3185.

Guindon v. Culligan, 2004CV714. Opinion dated July 20, 2005 supplied.

Plaintiff was a psychiatrist who developed an Internet relationship with the defendant. Plaintiff also began treating defendant and established a physician-patient relationship. After the romantic relationship ended, defendant posted negative information about plaintiff on the Internet. These Internet activities led the plaintiff to file several common-law tort claims against defendant. Defendant counter-claimed with professional malpractice claims. The case raised interesting issues relating to acts done over the Internet and whether that established jurisdiction. The case continued after I left the bench.

Counsel

Plaintiff: Tom Theis, Foulston Siefkin LLP, 5344 South Kansas Avenue, Topeka, Kansas 66603, 785-233-3600.

Defendant: Trey Meyer, 843 New Hampshire Street, P.O. Box 4512, Lawrence, Kansas 66044, 785-317-4685.

5. State v. Kane, 2006CR2242.

Defendant was a teaching aide assigned to mentor a troubled student. She entered into a sexual relationship with the young student that continued after defendant became a teacher. After conviction, I rejected defendant's request for a dispositional departure from the Kansas sentencing guidelines and sentenced defendant to prison. The Kansas Supreme Court upheld my ruling. 203 P.3d 734 (Kan. 2009).

Counsel:

State: Amy McGowan, Assistant District Attorney, 111 East 11th Street, Lawrence, Kansas 66044, 785-832-5318.

Defendant: James Rumsey, 840 Connecticut Street, Suite B, Lawrence, Kansas 66044, 785-856-3264.

 Blomgren v. Kansas Dep't of Revenue, 2005CV229. Opinion dated Aug. 26, 2005 supplied.

The Kansas Department of Revenue sought to revoke the defendants' liquor licenses for two liquor stores. Defendants challenged the state's administrative procedures and findings and the state challenged whether defendants had properly exhausted their administrative remedies. I determined the plaintiffs had properly exhausted their administrative remedies and denied defendant's motion to dismiss. The parties sought an interlocutory appeal of this decision. The Kansas Court of Appeals affirmed my decision. 191 P.3d 320 (Kan. Ct. App. 2008).

Counsel

State of Kansas: Laura Graham, General Counsel, Kansas Bureau of Investigation, 1620 SW Tyler, Topeka, Kansas 66612, 785-296-8207. Defendants: Dan Owen, Polsinelli Shughart, 700 West 47th Street, Suite 1000, Kansas City, Missouri 64112, 816-395-0671.

7. State v. Brouhard, 2005CR1042.

Sheriff's deputy was dispatched to a home following a 911 call for a domestic disturbance. On the way to the scene, dispatch informed the deputy that the caller had called back to "cancel" the first 911 and that the caller was unable to talk. Suspicion alerted to a possible domestic violence situation, the deputy stopped a distance from the home and waited for back up. While waiting, the deputy observed an individual exit the home and begin loading a vehicle. After checking with dispatch supervisors for guidance, the deputy made contact with the individual and inquired before a "pat-down" if the person had anything on him that would hurt the deputy. The individual responded that he had needles in his pocket. The deputy removed the contents of defendant's pocket and found illegal substances. The defendant moved to suppress. I denied the motion. My ruling

was affirmed by the Kansas Court of Appeals, 225 P.3d 780 (Kan. Ct. App. 2010).

Counsel:

State: Charles Branson, District Attorney, 111 East 11th Street, Lawrence, Kansas 66044, 785-766-7892.

Defendant: I have searched my records and have not been able to locate the name or contact information for trial defense counsel. In his appeal, defendant was represented by Randall L. Hodgkinson, Kansas Appellate Defender Office, 700 SW Jackson Street #900, Topeka, Kansas 66603, (785) 296-5484.

8. Kershenbaum v. Fasbinder, 2004CV294. Opinion dated Jan. 6, 2006 supplied.

Kershenbaum created a revocable trust to support himself and his wife during their lives and to distribute his estate after their death. As part of the testamentary distribution, he created four separate testamentary trusts. A dispute arose over language in the trust and whether it created a requirement for mandatory or discretionary payments by the trustee. Fashinder sued. I determined that the language created a discretionary trust and granted summary judgment to Kershenbaum. The Kansas Court of Appeals affirmed my ruling. 170 P.3d 922 (Kan. Ct. App. 2007).

Counsel:

Kershenbaum: David R. Frensley, 2 Emanuel Cleaver II Boulevard, Kansas City, Missouri 64112, 816-531-5262.

Fasbinder: Jeffrey R. King, Lathrop & Gage, 2345 Grand Boulevard, Kansas City, Missouri 64108, 816-292-2000.

9. State v. Streitberger, 2006CR1665.

The defendant was charged with rape. The case involved complex issues of DNA evidence. The alleged crime scene had a significant number of DNA loci, which were tested. The loci produced alleles from a number of different individuals present at the scene at the relevant time. Some of the short tandem repeats from the alleles had degraded. The jury was presented with complex scientific evidence about DNA testing, test results and who the known DNA contributors could be for the samples. Following a jury trial, the defendant was found not guilty.

Counsel:

State: Angela Wilson, Sedgwick County District Attorney's Office, 535 North Main, Wichita, Kansas 67203, 785-691-5372.

Defense: Angela Keck, Angela Keck Law Offices LLC, 122 North Cherry, Olathe, Kansas 66061, 913-782-9720.

 Fancher Enters., LLC v. Gentle Dentisty, PA, 2004CV575. Opinion dated Nov. 7, 2005 supplied.

This was a contract dispute between a landlord, a contractor and a business building contracting to building out an office space. At the conclusion of the project the parties could not agree on the cost. The contractor filed claims against the landlord for foreclosure of a mechanics lien, breach of contract and quantum meruit. The contract between the landlord and the contract was unambiguous and this claims was resolved on summary judgment in favor of the landlord. The contract between the contractor and business was not specific in many areas. The factual issues between the two remaining parties were resolved in a jury trial.

Counsel:

Fancher: Michael A. Millett, no contact information available Gentle Dentistry, PA: Shon Qualseth, Thompson, Ramsdale & Qualseth, 333 West 9th Street, Lawrence, Kansas 66044, 785-841-4554.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - 1. Morales v. Youngquist, 02CV635. Opinion supplied in response to 13c.

Counsel:

Plaintiffs: Bruce Plenk and Max Kautsch, 16 East 13th Street, Lawrence, Kansas, 66044, 785-840-0077.

Defendants: Chris Miller, 645 Country Club Terrace, Lawrence, Kansas 66049, 785-841-2110.

2. State v. Richardson, 06CR768. Opinion supplied in response to 13c.

Counsel:

State: Amy McGowan, Assistant District Attorney, 111 East 11th Street, Lawrence, Kansas 66044, 785-832-5318.

Defendant: Thomas Johnson, Petetish, Immel, Heeb & Hird, L.L.P., 842 Louisiana Street, P.O. Box 485, Lawrence, Kansas, 785-843-0450.

3. Miller v. Johnson, 04CV704. Opinion supplied in response to 13c.

Counsel:

Plaintiff: William Skepnck, Skepnek Law Firm, PO Box 442226, Lawrence, Kansas 66044, 785-856-3100.

Defendant: Bruce Keplinger, Norris & Keplinger, LLC, 6800 College Boulevard, Suite 360, Overland Park, Kansas 66211, 913-323-3185.

4. Guindon v. Culligan, 04CV714. Opinion supplied in response to 13c.

Counsel:

Plaintiff: Tom Theis, Foulston Siefkin LLP, 5344 South Kansas Avenue, Topcka, Kansas 66603, 785-233-3600.

Defendant: Trey Meyer, 843 New Hampshire Street, P.O. Box 4512, Lawrence, Kansas 66044, 785-317-4685.

5. State of Kansas. Dep't of Revenue v. Blomgren, 05CV229. Opinion supplied in response to 13c.

Counsel

State of Kansas: Laura Graham, General Counsel, Kansas Bureau of Investigation, 1620 SW Tyler, Topeka, Kansas 66612, 785-296-8207. Defendants: Dan Owen, Polsinelli Shughart, 700 West 47th Street, Suite 1000, Kansas City, Missouri 64112, 816-395-0671.

6. Fasbinder v. Kershenbaum, 04CV294. Opinion supplied in response to 13c.

Counsel:

Kershenbaum: David R. Frensley, 2 Emanuel Cleaver II Boulevard, Kansas City, Missouri 64112, 816-531-5262.

Fasbinder: Jeffrey R. King, Lathrop & Gage, 2345 Grand Boulevard, Kansas City, Missouri 64108, 816-292-2000.

7. West Meadows Condominium Ass'n v. Davis, 04CV205. Opinion supplied.

Counsel:

West Meadows: Chris Miller, 645 Country Club Terrace, Lawrence, Kansas 66049, 785-841-2110.

Countrywide: Matthew Grundy, 19 North Water Street, Liberty, Missouri 64068, 816-479-2384.

8. State v. Mejia, 2005CR949. Opinion supplied.

Counsel:

State: Trent Krug, United States Attorney's Office for the District of Kansas, 500 State Avenue, Suite 360, Kansas City, Kansas, 913-551-6730. Defendant: Juanita Carlson, 1046 New Hampshire, Suite 52, Lawrence, Kansas, 785-749-5986.

9. State v. Smith, 2007 CR 303. Opinion supplied.

Counsel

State: Angela Wilson, Sedgwick County District Attorney's Office, 535 North Main, Wichita, Kansas 67203, 785-691-5372.

Defendant: Wendy Newell, Newell Law Office, 512 East 9th Street, Lawrence, Kansas, 785-838-4100.

10. Fancher Enterprises, LLC v. Gentle Dentisty, PA, 2004CV575. Opinion supplied in response to 13c.

Counsel:

Fancher: Michael A. Millett, no contact information available Gentle Dentistry, PA: Shon Qualseth, Thompson, Ramsdale & Qualseth, 333 West 9th Street, Lawrence, Kansas 66044, 785-841-4554.

e. Provide a list of all cases in which certiorari was requested or granted.

These are the citations to the appellate cases. Opinions in my district court cases are unpublished.

State v. Brouhard, 225 P.3d, 2010 WL 744792 (Kan. Ct. App. 2010).

State v. Richardson, 218 P.3d 1197, 2009 WL 3837626 (Kan. Ct. App. 2010).

State v. O'Farrell, Jr., 216 P.3d 191, 2009 WL 3081369 (Kan. Ct. App. 2009).

State v. Kane, 203 P.3d 734, 2009 WL 862448 (Kan. Ct. App. 2009).

State v. Haney, 200 P.3d 503, 2009 WL 311811 (Kan. Ct. App. 2009).

Blomgren v. Kansas Dep't of Revenue, 40 Kan. App. 2d 208, 191 P 3d 320

Crim v. Crim, 40 Kan. App. 2d 367, 196 P.3d 375 (Kan. Ct. App. 2008).

City of Lawrence v. (iragg, 162 P.3d 66, 2007 WL 2080504 (Kan. Ct. App. 2007).

Kershenbaum v. Fashinder, 170 P.3d 922, 2007 WL 4158189 (Kan. Ct. App. 2007)

City of Lawrence v. Youngquist, 152 P.3d 110, 2007 WL 570292 (Kan. Ct. App. 2007).

State v. Wigfall, 146 P.3d 709, 2006 WL 3409786 (Kan. Ct. App. 2006).

West Meadows Condominium Ass'n, Inc. v. Davis, 146 P.3d 239, 2006 WL 3353773 (Kan. Ct. App. 2006).

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

State v. Richardson, 218 P.3d 1197, 2009 WL 3837626 (Kan. Ct. App. 2010). The appellate court affirmed all substantive rulings, but reversed and remanded for a hearing to determine whether the indigent defendant had the ability to pay his court-appointed attorney's fees.

Crim v. Crim, 40 Kan. App. 2d 367 (2008). Plaintiff sought a protection from abuse restraining order. I denied petitioner's request based on insufficient jurisdiction. Plaintiff had received various protection order rulings recently in the domestic division of the district court. The Kansas Court of Appeals reversed, ruling that the plaintiff's domestic proceedings did not bar her from pursuing simultaneous protection from abuse orders.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

All of my district court opinions were unpublished. The opinions are placed in the court file and stored at the Douglas County Clerk's Office.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Miller v. Johnson, 04CV704. Pending before the Kansas Supreme Court. Opinion supplied in response to 13c.

State v. Richardson, 06CR768, aff'd in part, rev'd in part, 218 P.3d 1197, 2009 WL 3837626 (Kan. Ct. App. 2010). Opinion supplied in response to 13c.

 Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court.

14. <u>Recusal:</u> If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general

description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant
 or a party to the proceeding or by any other person or interested party; or if you
 recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself:
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I recused myself from a handful of cases over the three years I was a district court judge. I did not keep a list of these cases, nor do I recall the names or specific facts of the cases. I recused myself from a case if required by the Kansas judicial cannons, which require disclosure if the judge's impartiality might reasonably be questioned, where the judge has a personal bias or prejudice toward a party or the party's lawyer or personal knowledge of disputed facts in the proceeding. I can only recall recusal from a small number of cases where I had a personal friendship with one of the parties or the party's lawyer that could create the appearance of bias.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.
 - Kansas Attorney General, appointed in January 2008 by then-Kansas Governor Kathleen Sebelius. I ran unsuccessfully for reelection in 2010.
- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I ran unsuccessfully for Kansas Attorney General in 2010. I have made financial contributions to political candidates and, during the course of the 2010 campaign,

appeared and/or spoke at fundraisers for other candidates. I did not keep a calendar of appearance for other candidates at fundraisers and any comments were usually brief introductions. I can recall from my memory appearing at fundraising events for Tom Adrian, Mike Slattery, Paul Davis, Gene Riordan, and Melanie Meier for Kansas House of Representatives; Chris Biggs for Kansas Secretary of State; Tom Holland for Kansas Governor; and Dennis McKinney for Kansas State Treasurer. I recall appearing at an event for Laura Kelly for Kansas Senate and several events for Rick Guinn for Johnson County, Kansas District Attorney in the 2008 election cycle. Additionally, I supported fundraising events for Terry Goddard, Attorney General of Arizona; Dong Gansler, Attorney General of Maryland; Dustin McDaniel, Attorney General of Arkansas; and Thurbert Baker, Attorney General of Georgia in the 2010 election cycle. I may have supported candidates for attorney general in the 2008 cycle, but I do not have records as to which candidates.

As attorney general, I participated in the Democratic Attorney General's Association from February 2008 to December 2010. I attended conferences and in the 2008 election cycle served on the groups allocation committee which made decisions about financial contributions for attorney general candidates across the county.

I also stood for retention election as a district court judge in 2006.

16. Legal Career: Answer each part separately.

- Describe chronologically your law practice and legal experience after graduation from law school including:
 - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;
 - 1993 1994: I served as a law clerk to Judge Deanell R. Tacha, U.S. Court of Appeals for the Tenth Circuit.
 - ii. whether you practiced alone, and if so, the addresses and dates;
 - I have not practiced alone.
 - iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1994 – 2005 Shamberg, Johnson & Bergman 2600 Grand Boulevard Kansas City, Missouri 64108 Partner (1998 – 2005) Litigation Associate (1994 – 1998)

2008 – 2011 State of Kansas 120 SW 10th Avenue Topeka, Kansas 66612 Kansas Attorney General

2011 – present Stevens & Brand 900 Massachusetts Lawrence, Kansas 66044 Partner

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

The only time I served as a mediator was during my time as a district court judge.

b. Describe:

 the general character of your law practice and indicate by date when its character has changed over the years.

I practiced law at Shamberg, Johnson as a litigation associate (1994-1998) and later as a partner (1998-2005). I represented individuals and businesses in environmental, products liability, business torts and personal injury cases. I represented a small number of clients in white-collar criminal matters.

As Kansas Attorney General (2008-2011), I handled a variety of legal matters representing the state. I oversaw criminal investigations, wrote legal opinions, argued in appellate court and prosecuted criminal matters. I focused on increasing the office's consumer protection efforts and increased consumer recoveries significantly during my term. I emphasized fighting Medicaid fraud, and the office recovered more during my three years in office than in all the previous years of the Kansas Medicaid Fraud division combined.

As a partner at Stevens & Brand (2011-present), I represent a variety of business and public entities in various legal issues. I counsel these clients on employment matters, business issues and appear in court as required.

 your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

In private practice I represented individuals, businesses and governmental entities in a variety of litigation and trial work.

As attorney general, I represented the state in defending and prosecuting claims. I oversaw an office of attorneys and investigators and developed the plans and priorities the office would pursue. I participated in criminal proceedings, charging decisions, and case disposition decisions. 1 participated in civil cases, litigation strategy, settlement negotiations and appellate matters.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I have appeared in court frequently throughout my legal career. In private practice I appeared frequently in state and federal court for motions, hearings and trials. I argued cases in the state appellate courts in Kansas and Missouri. As a state district court judge I handled a civil and criminal docket that included frequent hearings and trials. As attorney general, I prosecuted two murder cases and argued before the Supreme Court of the United States.

i. Indicate the percentage of your practice in:

federal courts: 35%
 state courts of record: 65%
 other courts:

4. administrative agencies:

ii. Indicate the percentage of your practice in:

1. civil proceedings: 70%
2. criminal proceedings: 30%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried approximately 14 cases to verdict. I was chief counsel in approximately five of these cases and co-counsel in approximately nine cases.

i. What percentage of these trials were:

1. jury: 80% 2. non-jury: 20%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I assisted in drafting and editing the briefs in *Kansas v. Colorado*, No. 105, Orig., 129 S. Ct. 1294, 173 L. Ed. 2d 245 (2009) and I argued the case before the Supreme Court of the United States on December 1, 2008. The briefs and transcript of argument are supplied.

I assisted in drafting and editing a Motion for Leave to File Petition and a Reply in Kansas v. Nebraska, No. 126, Orig. (2010). The case is currently pending before the Supreme Court of the United States. The briefs are supplied.

I assisted in drafting and editing an amicus brief representing 47 states and the District of Columbia in *Snyder v. Phelps*, 130 S. Ct. 1737, 176 L. Ed. 2d 211 (2010). The amicus brief is supplied.

I assisted in editing and reviewing the brief in Kansas v. Ventris, 129 S. Ct. 1841, 173 L. Ed. 2d 801 (2009). The brief is supplied.

Additionally, the Kansas Attorney General's Office filed briefs in the following cases, but I did not participate in the drafting or editing:

United States v. Comstock, 130 S. Ct. 1949, 176 L. Ed. 2d 878 (2010).

Carr v. United States, 130 S. Ct. 2229, 176 L. Ed. 2d 1152 (2010).

Astra USA, Inc. v. Santa Clara County, 131 S. Ct. 61 (2010).

Kansas v. Morton, 129 S. Ct. 903, 173 L. Ed. 2d 158 (2009).

Van De Kamp v Goldstein, 129 S. Ct. 855, 172 L. Ed. 2d 706 (2009).

Kansas v. Smith, 129 S. Ct. 628, 172 L. Ed. 2d 639 (2008).

Martin v. Kansas, 129 S.Ct. 192, 172 L. Ed. 2d 138 (2008).

As attorney general I signed on to several amicus briefs as a signatory, but did not participate in drafting. These cases are listed below.

Camreta v. Greene, 09-1454, 2010 WL 5168883.

Commonwealth of Kentucky v. King, 09-1272, 2010 WL 4803139.

Chamber of Commerce v. Whiting, 09-115, 2010 WL 4339888.

Skinner v. Switzer, 09-9000, 2010 WL 3641075.

American Elec. Power Co. v. Connecticut, 10-174, 2010 WL 3501263.

Ortiz v. Jordan, 09-737, 2010 WL 3265256.

Williamson v. Mazda Motor of Am., Inc., 08-1314, 2010 WL 3167303.

Camreta v. Greene, 09-1454, 2010 WL 2691594.

Belleque v. Moore, 09-658, 2010 WL 2690587.

Harrington v. Richter, 09-587, 010 WL 2005329.

Michigan v. Bryant, 09-150, 2010 WL 1848211.

Magwood v. Patterson, 09-158, 2010 WL 565215.

Holland v. Florida, 09-5327, 2010 WL 383623.

McDonald v. City of Chicago, 08-1521, 2009 WL 4378909.

Briscoe v. Virginia, 07-11191, 2009 WL 3652660.

Merck & Co., Inc. v. Reynolds, 08-905, 2009 WL 3495343.

Wood v. Allen, 08-9156, 2009 WL 3115802.

Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson, 08-304, 2009 WL 2903917.

Padilla v. Kentucky, 08-651, 2009 WL 2564713.

Citizens United v. Fed. Election Comm'n, 08-205, 2009 WL 2365205.

National Rifle Ass'n of Am., Inc. v. City of Chicago, 08-1521, 2009 WL 1970185.

Smith v. Spisak, 08-724, 2009 WL 1556547.

McDaniel v. Brown, 08-559, 2009 WL 1317098.

Montejo v. Louisiana, 07-1529, 2009 WL 1007122.

Broad v. Weigel, 08-1128, 2009 WL 1009824.

Cuomo v. The Clearing House Ass'n, L.L.C., 08-453, 2009 WL 583791.

Rivera v. Illinois, 07-9995, 2009 WL 216162.

District Attorney's Office for the Third Judicial District v. Osborne, 08-6, 2008 WL 5462088.

Montejo v. Louisiana, 07-1529, 2008 WL 5417429.

Hawaii v. Office of Hawaiian Affairs, 07-1372, 2008 WL 5236222.

Vermont v. Brillon, 08-88, 2008 WL 4933583.

Cuomo v. The Clearing House Ass'n, L.L.C., 08-453, 2008 WL 4887719.

Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson, 08-304, 2008 WL 4600054.

Bell v. Kelly, 07-1223, 2008 WL 4496589.

Melendez-Diaz v. Massachusetts, 07-591, 2008 WL 4185394.

Arizona v. Johnson, 07-1122, 2008 WL 4154534.

Pacific Bell Tel. Co. v. Linkline Commc'ns, Inc., 07-512, 2008 WL 4154540.

Wyeth v. Levine, 06-1246, 2008 WL 3851613.

Entergy Corp. v. Riverkeeper, Inc., 07-588, 2008 WL 2847075.

Smith v. El-Amin, 07-1485, 2008 WL 2676561.

Altria Group, Inc. v. Good, 07-562, 2008 WL 2489866.

Bartlett v. Strickland, 07-689, 2008 WL 2511784.

Carcieri v. Kempthorne, 07-526, 2008 WL 2445505.

Oregon v. Ice, 07-901, 2008 WL 2367232.

Wilcox v. United States, 07-1336, 2008 WL 2219961.

Giles v. California, 07-6053, 2008 WL 859391.

District of Columbia v. Heller, 07-290, 2008 WL 405558.

Indiana v. Edwards, 07-208, 2008 WL 449963.

Iowa v. Bentley, 07-886, 2008 WL 534802,

In private practice, I assisted in drafting a petition in opposition to certiorari in Subaru of America, Inc. v. Compton, 519 U.S. 1042, 117 S. Ct. 611, 136 L. Ed. 2c 536 (1996). The brief is provided.

- 17. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - a. the date of representation;
 - the name of the court and the name of the judge or judges before whom the case was litigated; and
 - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
 - 1. Kansas v. Colorado, No. 105 Orig. (Supreme Court of the United States.)

This is a long-standing legal dispute between Kansas and Colorado over water in the Arkansas River. In 2008 I developed the legal strategy to seek reimbursement from Colorado for the legal expenses Kansas incurred in its successful claim against Colorado for overuse of Arkansas River water. After working with the team to draft the legal briefs in the Supreme Court of the United States, I argued the case on December 1, 2008. Kansas' argument was that the Court should use its own procedural rules to determine costs recoverable by the prevailing party, rather than procedural rules developed by Congress for the lower federal courts. In Kansas v. Colorado, 129 S. Ct. 1294, 173 L. Ed. 2d 245 (2009), the Court ruled that its own procedural rules apply to establishing which litigation costs are reimbursable in original actions under Article III of the United States Constitution. The Court, however, denied Kansas' claim for additional reimbursement. I worked on the ease from February 2008 to March 2009 when the Court issued its opinion. My co-counsel for Kansas was John Draper, Montgomery & Andrews, 325 Paseo de Peralta, Santa Fe, NM 87501, 505-982-3873. Opposing counsel for Colorado was Attorney General John W. Suthers, 1525 Sherman Street, Denver, CO 80203, 303-866-4500.

2. Kansas v. Nebraska and Colorado, No. 126 Orig. (Supreme Court of the United States).

This is a long-standing legal dispute between Kansas, Nebraska and Colorado over water in the Republican River Basin. From 2008 to 2010, I led the team developing the legal strategy to enforce the legal agreement reached in 2003 dividing water in the Republican River between these states. A settlement was reached in 2003 to divide the water, however Nebraska has continued its overuse in contravention of the agreement. The case has proceeded through an administrative process in the Republican River Compact Administration, which was unsuccessful. Next the matter was tried before an arbitrator in a non-binding arbitration that was similarly unsuccessful in resolving the dispute. In March of 2010, Kansas filed a motion to reopen the case in the Supreme Court of the United States to seek enforcement of the Court's 2003 decree. The matter is currently pending before the Court. I began working on the case in the spring of 2008 and continued through January 2011. I developed the legal strategy of the case, edited and assisted in drafting the briefs, and met with the Solicitor General's office to discuss the litigation and the Supreme Court's request that the Solicitor General file a brief. My cocounsel for Kansas was John Draper, Montgomery & Andrews, 325 Paseo de Peralta, Santa Fe, NM 87501, 505-982-3873. The United States is represented by Ed Kneedler, Deputy United States Solicitor General, Department of Justice, 950 Pennsylvania Ave, Washington, D.C. 20530, 202-514-2000. Nebraska is represented by Attorney General Jon Bruning and David Cookson, Chief Deputy, Nebraska Attorney General's Office. 2115 State Capitol, Lincoln, NE 68509, 402-471-2682.

3. State of Kansas v. Wilson, Case No. 08-CR-30 (Osborne County District Court 2009).

On March 25, 2008, in Portis, Kansas, farmer Scott Noel was murdered. I oversaw the investigation into his murder. Through processing the crime scene and through investigation, Mr. Wilson was identified as a suspect and charged with several burglaries and Noel's murder. In May of 2009, I prosecuted Mr. Wilson in the Osborne County, Kansas District Court and, following a trial, the jury convicted him of first degree murder and numerous burglaries. I drafted the pre-trial motions, made all court appearances and conducted all aspects of the trial. I obtained a life-sentence for Mr. Wilson. I worked on the case from March 2008 to May 2009. The judge was William Elliott. Defense counsel was Paul Oller, Oller, Johnson & Bittel, L.L.C., 111 West 10th Street, P.O. Box 851, Hays, KS 67601, 785-623-2966.

4. State of Kansas v. Mireles, Case No. 07-CR-524 (Butler County District Court 2010).

I prosecuted Mr. Mireles for the murder and aggravated rape and sodomy of 18 year-old Emily Sander. Mr. Mireles murdered Emily and then disposed of her body along the highway in Woodson County, Kansas and fled to Mexico. My office assisted in extraditing Mr. Mireles back to Kansas. I charged him with rape, aggravated sodomy and capital murder and prosecuted him in district court in Butler County, Kansas in February

2010. I obtained a conviction for capital murder and aggravated sodomy. Mr. Mireles was sentenced to life without the possibility of parole. I worked on the case from the spring of 2008 until trial in February 2010. The Judge was David Ricke. I was lead prosecutor; Butler County, County Attorney Jan Satterfield assisted with the case. Jan Satterfield, Butler County Attorney, 201 West Pine, Suite 104, El Dorado, KS 67042, 316-321-6999. Defense counsel was Melanic Freeman-Johnson, Death Penalty Defense Unit, 714 S.W. Jackson, Suite 200, Topeka, KS 66603, 785-296-6555.

 State, ex rel. Stephen N. Six, Attorney General v. Kansas Lottery, 286 Kan. 557, 186 P.3d 183 (2008).

The attorney general's office filed an action in district court challenging the constitutionality of the Expanded Lottery Act. The district court upheld the statute. I assisted in drafting and editing the brief in the direct appeal to the Kansas Supreme Court. The proceedings were undertaken to test the constitutionality of the statute to settle the law before investment and development could begin in building new casinos in the state. Counsel for Kansas was Mike Leitch, Associate General Counsel, University of Kansas, 245 Strong Hall, 1450 Jayhawk Boulevard, Lawrence, KS 66045, 785-864-3276. Counsel for Prairie Band Potawatomi Nation was David Prager, III, 3929 SW Friar Road, Topeka, KS 66610, 816-691-2721. Counsel for Kansas Lottery was Dan Biles, now on the Kansas Supreme Court, 301 SW 10th Avenue, Topeka, KS 66612, 785-296-3229.

6. State ex rel. Stephen N. Six, Attorney General, and Pawnee County Cmty. Health Org., Inc. v. St. Joseph Mem'l Hosp., Inc., Case No. 09-CV-61 (Pawnee County District Court 2010).

Central Kansas Medical Center ("CKMC") decided to close St. Joseph Hospital in Larned, a city of 4,500 in central Kansas. CKMC refused to sell or transfer its building or its Critical Access Hospital ("CAH") status to the Pawnec County Community Health Organization ("PCCH"), an organization formed by Larned citizens to buy the assets and keep the only hospital in town operating. Because St. Joseph was formed as a charitable hospital, the misuse or waste of its charitable assets fell under my power as attorney general to review. I worked with our team of lawyers to develop the strategy to save the hospital. Suit was filed against CKMC seeking to force the transfer of its St. Joseph Hospital assets to PCCH. Additionally our team worked with community leaders to put a local sales tax on the ballot to seek long-term funding for the new community hospital. The case was settled with CKMC transferring its assets to PCCH. Counsel for PCCH was Jay Fowler, Foulston Siefkin, 1551 North Waterfront Parkway, Suite 100, Wichita, KS 67206, 316-291-9541 and counsel for CKMC was Anthony Rupp, Polsinelli Shugart PC, 6201 College Boulevard, Suite 500, Overland Park, KS 66211, 913-234-7520..

7. Pronold v. Bridgestone/Firestone, 01-CV-05088 (Johnson County District Court 2004).

I represented a young man who was injured in a vehicle roll-over accident caused by a tread separation on a Firestone tire. I conducted the litigation and handled the two-week

trial. The jury determined the tire was defective and returned a verdict in favor of my client. The judge was Janice Russell, Johnson County District Court, Johnson County, Kansas. The Defense counsel for Firestone was Paul McCausland, Young, Bogle, McCausland, Wells & Blanchard, P.A., 106 West Douglas, Suite 923, Wichita, KS 67202, 316-265-7841 and defense counsel for defendant KEYS was Kathleen Hardee, Polsinelli Shughart, Twelve Wyandotte Plaza, 120 West 12th Street, Kansas City, MO 64105, 816-395-0644.

8. Bessey v. Genuine Auto Parts, Inc., CL 89895 (Polk County District Court, Des Moines, Iowa 2004).

I represented plaintiff in her claims against a truck driver and his employer in connection with a collision that injured plaintiff and killed her two-year-old daughter. The plaintiffs were stopped at a railroad crossing with flashing lights. The defendant truck driver operated his truck in heavy fog and collided with the plaintiffs. The allegations were that the company had inadequate policies and training on driving in dangerous conditions and that the driver was negligent. I handled the litigation. The case was settled shortly before trial. The judge was Carla T. Schemmel, Polk County District Court, Fifth and Mulberry Street, Des Moines, IA, 515-286-3772. Counsel for Genuine Auto Parts was William Fanter, Bradshaw, Fowler, Proctor & Fairgrave P.C., 801 Grand Avenue, Suite 3700, Des Moines, IA 50309, 515-243-4191.

9. Meyer, as Executor of the Estate of Lola Church, deceased v. Slawson Heating & Plumbing, 0204-CV-148 (Leavenworth County District Court 2004).

I represented the family of an elderly woman who was killed by carbon monoxide in her home following faulty repairs and equipment installation by the defendant. As a result of defendant's work, dangerous levels of carbon monoxide built up in the home and when the weather got cold and the furnace operated continuously, lethal levels of CO were created killing Mrs. Church. The case was settled shortly before trial. Slawson Plumbing counsel was Michael B. Lowe, Payne & Jones, 11000 King, Suite 200, P.O. Box 200, Overland Park, KS 66225, 913-469-4100. Counsel for Edward Slawson was now-judge Michael D. Gibbens, Leavenworth County District Court, 601 South 3rd Street, Leavenworth, KS 66048, 913-684-0408).

10. Thomas v FAG Bearings Corp., 846 F. Supp. 1382 (W.D. Mo. 1994); and Thomas v. FAG Bearings Corp., 50 F.3d 502 (8th Cir. 1995).

As an associate attorney, I assisted two partners at my firm with state and federal cases against FAG Bearings Corp. for leaking the chemical TCE into the cities' ground water supply contaminating the water. On behalf of the citizens of the two communities, the suits sought damages to connect residents to a safe supply of clean water. The matter was settled. Counsel for FAG Bearings was David Oliver, 2600 Grand Boulevard, Suite 1200, Kansas City, MO 64108, 816-561-1888. The judge in the Federal District Court, Western District of Missouri, was Joseph Stevens; the judge in state court in Newton County, Missouri was Timothy W. Perigo.

18. <u>Legal Activities</u>: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Mortgage Fraud Prosecutions. I worked with state agencies, the United States Attorney's Office, and the Federal Trade Commission on combating fraud in the mortgage loan industry. I served on the National Association of Attorneys General State-Federal Task Force on Mortgage Enforcement. My office brought suit against several mortgage lenders and other businesses such as debt consolidation businesses that were engaged in defrauding Kansas consumers.

Operation Child Shield Prosecutions. In 2009, concerned about increasing victimization of children on the Internet, I developed Operation Child Shield in the Kansas Attorney General's Office. This was the first time our office had investigated, charged and prosecuted child pornographers and those criminals seeking child sexual partners through the Internet. During 2009 and into 2010, we obtained the equipment and software to track individuals trading child pornography on peer-to-peer networks, trained my investigators to run the operation and began to take down these criminals victimizing kids. In 2010 we convicted and sentenced six individuals for trading child pornography, had eight on-going cases and another twenty under investigation. In addition, through our operation we discovered websites where individuals were trading and advertising for sex with young children. The efforts of Operation Child Shield and other combined efforts in this area have lead to these sites taking down these sorts of ads and worked to protect kids from becoming victims.

Medicaid Fraud. I developed, oversaw and implemented an increased emphasis on cracking down on Medicaid Fraud. Through increased cooperation with the United States Attorney's Office in Kansas and an increased emphasis on stopping Medicaid Fraud our team increased significantly Kansas' recoveries. In the years before I started, the office recovered less than \$1 million per year in Medicaid Fraud. In my first year we increased recoveries to \$8.7 million, in our second year our team doubled our results and brought in \$17.95 million, and in 2010 we recovered almost \$22 million.

Consumer Protection. A similar legal strategy and deployment of resources was implemented in our consumer protection division. Through an increased effort on efficient and timely resolution of claims and lawsuits and an increased effort to combat Internet and other fraud our team significantly increased consumer recoveries for Kansas. In 2006, less than \$1 million was recovered or saved in this division. In my first year, we increased savings and recoveries to \$5.6 million, in year two we double those results and brought in 8 million, and in 2010 our consumer division recovered \$17.3 million in savings and recoveries.

I have not performed lobbying activities.

19. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. <u>Outside Commitments During Court Service</u>: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

NΙα

22. Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salarics, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. <u>Statement of Net Worth</u>: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am not aware of any family members or other persons or parties that would present a conflict-of-interest. The only categories of litigation that may present a conflict would be matters handled by the Kansas Attorney General's office during my tenure, or that were handled by my present law firm, that may be appealed to the Tenth Circuit Court of Appeals. I would handle all such cases in accordance with the Code of Conduct for United States Judges and other relevant canons and statutory provisions.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

As I did as a district court judge, I would continue to examine the applicable recusal statutes and judicial codes of conduct to ensure I meet these standards. As I have done previously in the district court context, I would consult with my colleagues on how they have addressed conflict and recusal issues as an additional source of guidance. If confirmed, I would carefully apply the recusal statues, and the relevant canons of the Code of Conduct for United States Judges.

25. <u>Pro Bono Work</u>: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As attorney general I encouraged our attorneys to do pro bono work with the Kansas National Guard and Reserve members who have employment or other issues arising from deployment or return from deployment. My attorneys have participated in several cases serving Guard members this way.

I devoted many hours to the legal profession through my work with the Kansas Bar Association. I served on several committees and on the board of governors. We worked on issues to improve the profession and better ways to serve consumers of legal services.

In private practice, I was appointed to several pro bono cases from the Jackson County, Missouri Circuit Court. I represented family court and juvenile court clients. I do not recall the details of these representations. I do recall one juvenile case where I represented a young man charged with robbing an occupied dwelling. I took several statements and depositions and devoted many hours to preparing for trial. A few days before trial, the prosecutor dismissed all charges. I recall the young man's name, but his juvenile records are confidential.

26. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your

jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I am not aware of any selection commission in my jurisdiction to recommend candidates for nomination to the Tenth Circuit Court of Appeals. When I learned that there would be a vacancy on the Tenth Circuit Court of Appeals, I contacted Secretary of Health and Human Services Kathleen Sebelius for recommendations about how to put my name forward. She put me in touch with attorneys in the White House Counsel's Office, and I sent in my resume for consideration. Since November 2010, I have been in contact with pre-nomination officials at the Department of Justice. On January 12, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice. On March 9, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.



FINANCIAL DISCLOSURE REPORT NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

Person Reporting (last pame, first, middle initial)	2. Court or Organization	3. Date of Report
Six, Stophen N.	United States Court of Appeals for the Tenth Circuit	03/09/2011
Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	Sa. Report Type (check appropriate type)	6. Reporting Period
	Nomination, Date 3/9/2011	1/1/2010
Circuit Iudge	Initial Annual Final	to
	5b. Amended Report	3/9/2011
7. Chambers or Office Address	8. On the basis of the information contuined in this Report are modifications pertaining theorie, it is, in my spinion, in con with applicable have any regulations.	d any apliante
Stevens & Brand 900 Massachusetts St	wird whitemore town ward a sale to the	
Lawrence, KS 66044	Reviewing Officer	Date
IMPORTANT NOTE, checking the NONE be	S: The instructions accompanying this firm must be followed. Complete x for each part where you have no reportable information. Sign on last ,	e all parts, page.
NONE (No reportable positions.) POSITION	NAME OF ORGAN	JIZATION/ENTITY
. Parmer	Stevens & Brand	
	-	·
1. AGREEMENTS. (Reporting individual and		
_	3; see pp. 14-10 of fung instructions.)	
NONE (No reportable agreements.)		
DATE	PARTIES AND TERMS	
. 1995 Shambo	erg, Johnson & Bergman, Retirement Plan with former law firm, no contro	ıl

FINANCIAL DISCLO	TOAGGG GGHS	Name of Person Repor	ting		Date of Report	
Page 2 of 6			Six, Stephen N.			
II. NON-INVESTMEN	IT INCOME. (Reporting	g individual and spoure; se	e pp. 17-24 of filing instruction	(c)	<u> </u>	
A. Filer's Non-Investment Is	icome					
NONE (No reportable	non-investment income.)					
DATE		SOURCE AND	TYPE	(you	INCOME ira, not spouse's)	
. 201 (-YTD Stevens & Brand, partnership agreement				\$13,871.22		
2.20[]	State of Kansas, sale	ary			\$3,680.00	
3.2010	State of Kansas, sala	ary			\$95,698.53	
4, 2009 State of Kansas, salary				\$96,939.10		
5,2009	Shamberg, Johnson	& Bergman, partnership	agreement		\$73,792.60	
<u>DATE</u>	State of Kanzas, soli	SOURCE AND	TYPE			
1. 2011	State of Kanyas, sali	ary				
2, 2010	State of Kansaa, sain	ary				
3, 2010	Shook, Hardy & Bar	con, lawyer, legal writir	g consulting			
4.		· · · · · · · · · · · · · · · · · · ·				
IV. REIMBURSEMEN' (Includes those to spouse and dependent ch						
NONE (No reportable	reimbursements.)					
<u>\$OURCE</u>	DATES	LOCATION	PURPOSE	ITEMS PAI	D OR PROVIDED	
1. Exempt						
2.						
3						
<u>. </u>						

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Six, Stephen N.	Date of Report 03/09/201 i
V. GIFTS. (Includes those to rponse and dependent children; see p	p. 28-31 of filing instructions)	
NONE (No reportable gifts.)		
SOURCE	DESCRIPTION	YALUE
t. Exempt		
2.		
3,		
4.		
5.		
VI. LIABILITIES, (Includer those of spotter and dependent	children; see pp. 32-33 of filing instructions)	
NONE (No reportable liabilities.)		
CREDITOR	DESCRIPTION	VALUE CODE
h		
_		
3.		
4.		
5.		

	NANCIAL DISCLOSURE R ge 4 of 6	EPOF	e T	She, Stephen						03/09/2011	
VI	. INVESTMENTS and TRUS				Includes tho	se of spoure and d	ependent chi.	ldren; sec	pp. 34-69	of filing instructions.)	
_}	NONE (No reportable income, as:	ets, or				-					
	A. Description of Assets (including trust easets)		B. ome during ning period	Circus va	C. due at and ing period		Transaction	D. ons during		orting period	
	Place "(X)" after each asset exempt from prior disclasion	(I) Amount Code I (A-II)	(2) Type (c.g div., nent or int.)	(1) Value Code 2 (3-P)	(7) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, self, rectemption)	(2) Date mm/dd/yy	(3) Value Code 2 (I-P)	(4) Gain Coda I (A-H)	(5) Identity of buyer/seller (If private transaction)	
1.	MSFT		None	1	Т	Exempt			ļ		
2.	мот	A	Dividen			Exempt					
3.	MMI (formerly MOT)	-	None	5	Т	Exempt	-				
4.	MSI (formerly MOT)	-	None	+,-	т	Exempl					
5,	XOM	A	Dividen	á J	т	Ексокря					
6.	PG	A	Dividen	ß)	Т	Exempt					
7.	HSP	A	Dividen	3	Υ	Exempt					
8,	Vanguard SDO Index Fund	۸	Dividen	d K	7	Exempt					
9.	Vanguard Total Road Mkt	A	Dividen	i K	т	Exempt					
10.	American Contury-Growth Fund		None	к	Т	Exempt					
B.	American Century-Learning Quest-529		None	М	Т	Exempt					
12.	TLAA-CREF Growth Fund		None	К	T	Exempl					
t3.	Commerce Bank Account	A	Interest	K	T	Exempt					
14.	Charles Schwab Account	А	Interest	1	Ŧ	Exempt					
15.	Vanguard 500 Index Fund	A	Dividen	i M	T	Exempt				_	
16.	Shamberg, Johnson & Bergman Retirement Plan, no control		None	N	Т	Exempt					
17.	Kansas Public Employees Retirement System, no control	A	Interest	к	Т	Exempl					
(5 2. Y (5	ome Disis Codes: A =\$1,000 or less or Columns D1 and D4) F =\$50,001 · \$100,000 slop Codes J =\$150,000 or less or Columns C1 and D0) N =\$250,000 or less or Columns C1 and D0) P3 =\$25,000,001 · \$50,000	,000	8 =\$1,001 - \$1 G =\$100,001 - K =\$15,001 - \$ C =\$506,001 -	\$1,000,000 50,000 \$1,000,000	L, ≈3.90,00 P1 ≈\$1,00 P4 ≈3Mors.	0,001 - \$5,000,000 t - \$180,000 0,001 - \$5,000,800 zhan \$59,000,000	H2=Mor M =\$100 P2 =\$5,0	01 - \$15,000 te than \$5,0 (001 - \$150 00,001 - \$1	000,000 ,000	E=\$15,00) - \$50,000	
7, 7	uluc Method Codes Q = Appresiad se Column C1) U videok Value		R = Cotot (Res) V = Cober	ERAC Only)	S = Assess		ToCash	Market			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 5 of 6	Six, Stephen N.	03/09/2011
		}

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Report)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting .	Date of Report
Page 6 of 6	Six, Stephen N.	03/09/2011
	<u> </u>	

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete in the heat of my knowledge and helief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that corned income from outside employment and bonoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judeial Conference regulations.

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY PALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CHIMINAL SANCTIONS (S U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other financial obligations) of yourself, your spouse, and other financial obligations of yourself.

ASSETS				LIABILITIES			
Cash on hand and in banks		16	000	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		432	680	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		3	600
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		262	200
Real estate owned - see schedule		910	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		18	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		265	800
Commerce Bank-Shamberg, Johnson & Bergman Retirement Plan		265	000	Net Worth	1	405	880
Kansas Public Employees Retirement Plan		30	000				
Total Assets	1	671	680	Total liabilities and net worth	l	671	680
CONTINGENT LIABILITIES				GENERAL INFORMATION			-
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax						-	
Other special debt							

863

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
HSP	\$1,600
MSFT	11,000
MGI	200
MMI	6,960
MSI	4,706
PG	5,399
VVI	500
XOM	10,392
American Century Growth Fund	42,070
American Century Learning Quest 529 Plan	143,715
TIAA-CREF Growth Fund	46,000
Vanguard 500 Index Fund	147,523
Vanguard Total Bond Market Index Fund	<u>12</u> ,615
Total Listed Securities	\$432,680
Real Estate Owned	
Personal residence	\$445,000
Second home	465,000
Total Real Estate Owned	\$910,000
Real Estate Mortgages Payable	
Personal residence	\$159,200
Vacation home	103,000
Total Real Estate Mortgages Payable	\$262,200

AFFIDAVIT

I, Stephen Newton Six , do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

M-7-9011

(DAIL)

Line W. Simp

MOTARY PUBLIC - State of Kanese
DIANE W. STATESOM
My Appt. Bas. 12-9 | 12-

Senator KLOBUCHAR. Very good.

Now, does our next panel want to come up? I already introduced all of you. If you could raise your right hand, will you please stand to be sworn.

[Whereupon, the witnesses were duly sworn.]

Senator KLOBUCHAR. Very good. Thank you, everyone.

You all have interesting and good backgrounds. I think we'll start. We'd love to have you introduce the people who are here with you today. Now that the Six's have cleared out, there are some empty seats behind you. Everyone that doesn't have a seat is welcome to move up. Here we go. Let's get Ms. Marmolejo's family. I just love saying your name, as you can tell. There we go. OK. Very good.

Ms. Marmolejo, do you want to begin? Let's get everyone seated here. There we go. Do you want to begin and introduce your family?

STATEMENT OF MARINA GARCIA MARMOLEJO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

Ms. Marmolejo. Yes. Thank you, Senator. First of all, I would like to say thank you for the opportunity and the privilege of being here today and for your consideration of my nomination.

I would like to begin by thanking our President, Barack Obama, for this nomination and this incredible honor. I would like to thank Congressman Henry Cuellar and his staff for their unconditional and unwavering support. Clearly, I would not be here today if it wasn't for their support and that of the Texas Democratic delegation.

I would like to convey a similar sentiment of gratitude to both of my Texas Senators who are here today. They, too, have given me their bipartisan support from the very beginning of this process and I am very grateful for them. I also thank them for such a kind

and generous introduction today.

And now if I may, I'm pleased and honored to introduced all of my family members. I've got my husband here today, Wesley Boyd, and our two children, Natalia, who is 10 years old, and Nicolas, who is 8 years old. I am blessed to have both of my parents here, Abraham and Marina Garcia, my aunts Drs. Martha and Gloria Marmolejo, my sister Sarah Santos, her husband Frank, and my two-year-old nephew Frankie, my sister Maria Aurora Garcia, her husband Mark McPherson, and their two children, Ava and Levi. And I believe Levi's out in the crying room because he's only 6 months old. My brother Abraham and his wife Melissa could not join us today, but I know that they're watching the webcast and so I salute them today.

I also have my cousin Anna Garcia with me here today, and two dear friends, Brigadier General Dixie Morrow, who was confirmed

during the 111th Congress, and my friend Janice Ayala.

And finally, I would be remiss if I didn't thank some of my friends at home who are watching this webcast who have been incredibly supportive throughout this entire process: Michael McCromm, Ron Adder, Marylou Castillo, Don DeGabriel, Doris Morrow; and my friends at Thompson & Knight: Debbie Alsip, Jim

Kowser, John Martin, Richard Roper, and others. Thank you so

Senator Klobuchar. Well, thank you. And we welcome your extended family here.

Ms. Marmolejo. Thank you, Senator.

Senator Klobuchar. So we're very glad that you're all here.

Mr. Green.

[The biographical information follows.]

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

Marina Garcia Marmolejo (former name: Marina Lerma)

2. Position: State the position for which you have been nominated.

United States District Judge for the Southern District of Texas

 Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: Reid Davis LLP

4301 Westbank Drive Building B, Suite 230 Austin, Texas 78746 (512) 647-6100

4. Birthplace: State year and place of birth.

1971; Nuevo Laredo, Tamaulipas, Mexico

5. <u>Education</u>: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1993 - 1996, St. Mary's University School of Law; J.D., 1996

1995 - 1996, St. Mary's University Graduate School; M.A., 1996

1989 - 1992, University of the Inearnate Word; B.A., 1992

6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2009 (November) - Present Reid Davis LLP 4301 Westbank Drive Building B, Suite 230 Austin, Texas 78746 Partner

2009

Diamond McCarthy LLP 6504 Bridgepoint Parkway, Suite 400 Austin, Texas 78230 Of Counsel (July 2009) Partner (August – November 2009)

2007 – 2009 Thompson & Knight LLP 4040 Broadway, Suite 615 San Antonio, Texas 78209 Of Counsel

1999 – 2007 United States Attorney's Office Southern District of Texas 1100 Matamoros, 2nd Floor Laredo, Texas 78042 Assistant United States Attorney

1999 Law Offices of Jesus M. Dominguez 902 Market Street Laredo, Texas 78040 Affiliated Attorney

1998 1999 Federal Public Defender's Office Southern District of Texas 1501 Matamoros Laredo, Texas 78042 Assistant Federal Public Defender

1996 – 1998 Federal Public Defender's Office Western District of Texas 2205 Veterans Blvd, Suite A2 Del Rio, Texas 78840 Assistant Federal Public Defender 1993 – 1996 St. Mary's University School of Law One Camino Santa Maria San Antonio, Texas 78228 Research Assistant to Professor Raul M. Sanchez

1993 United Independent School District 201 Lindenwood Laredo, Texas 78045 Substitute Teacher

Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

I have not served in the military. I have not registered for selective service.

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Outstanding Service, Immigration and Customs Enforcement (2007)
Outstanding Service, Drug Enforcement Administration (2006)
Outstanding Service, Federal Bureau of Investigation (2003, 2006)
Outstanding Service, Office of the Inspector General, Dep't of Homeland Security (2005)
Michael T. Shelby U.S. Attorney's Sisyphus Award (2002, 2004, 2005)
Director's Award for Superior Performance as an AUSA (2002)
Service Recognition, Nuevo Laredo, Tamaulipas Rotary Club (2002)
Tejano Achievers Award, Laredo LULAC Council (2000)
Associate Editor, St. Mary's Law Journal (1994 – 1996)
Member, Phi Delta Phi Honor Society (1996)
Member, Alpha Chi Honor Society (1992)
Member, Alpha Lambda Delta Honor Society (1990)

9. <u>Bar Associations</u>: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Association of Defense Counsel, Inc.
College of The State Bar of Texas
Laredo Women's Bar Association
National Association of Criminal Defense Lawyers
National Association of Assistant United States Attorneys

Texas State Bar Association Young Lawyers' Association of Laredo, Texas

10. Bar and Court Admission:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Texas, 1996

There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Fifth Circuit, 1996 United States District Court for the Southern District of Texas, 1999 United States District Court for the Western District of Texas, 1996 Supreme Court of Texas, 1997

My bar membership in the United States District Court for the Southern District of Texas lapsed for a seven-month period from July 2008 to February 2009 because of paperwork issues during my move from Larcdo to San Antonio, Texas. There has been no other lapse in membership.

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Alexander High School Law Magnet Program Advisory Board (2005) Literacy Volunteers of America (1993)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taker to change these policies and practices.

I am not a member of any organization that currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

As a student at the University of the Incarnate Word in San Antonio, Texas, I wrote for the student newspaper, The Logos. I have list and supplied copies of the articles of which I have retained a copy:

Bookstore Renovations Promise Better Service, Attractive Décor, Vol. 92 No. 5 THE LOGOS, Dec. 6, 1991.

Ballet School Alumni Join Students to Celebrate Timeless Children's Tale, Vol. 92 No. 5 THE LOGOS, Dec. 6 1991.

Nutcracker's Storyline Composed by Russian Commissioned to Create Ballet Based on Play, Vol. 92, No. 5 THE LOGOS, Dec. 6 1991

Golden Harvest Scheduled for Nov. 9 Volunteers Set Goal at Six Tons of Food. Vol. 92, No. 4 THE LOGOS, Oct. 31, 1991.

Although I do not remember and have been unable to identify any other published material I have written or edited, there may be others that I been unable to remember or identify.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Critique, Review of the U.S. Department of State's Country Reports on Human Rights Practices 1994, Lawyers Committee for Human Rights. I assisted Professor Raul Sanchez with research and editing of a critique of U.S.

Department's Country Reports on Human Rights Practices as they pertained to Mexico in 1994. Copy supplied.

Although I do not remember and have been unable to identify any other reports, memoranda, or policy statements that I prepared or to which I contributed, there may be others that I been unable to remember or identify.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None that I recall or have been able to identify.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

"Immigration Consequences of Criminal Convictions," Presented at the State Bar of Texas 35th Annual Advanced Criminal Law Course, July 20-23, 2009, Dallas, Texas. Published article and PowerPoint presentation supplied.

"Litigation Fundamentals: Closing Arguments," Telephonic CLE presentation on behalf of the ABA, July 16, 2009, San Antonio, Texas. Co-presented with Attorneys Lamont Jefferson and Lori Massey. I have no notes, transcript, or recording.

"The Thin Green Line: When is an Environmental Violation Considered a Crime?" Co-presented with Attorney Scott D. Deatherage to BNSF Railway in 2008, 2650 Lou Menk Drive, Fort Worth, Texas 76131. PowerPoint presentation supplied.

Although I do not remember and have been unable to identify any other speeches or talks I have delivered, there may be others that I been unable to remember or identify.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you. I have searched my files and publicly-available Internet databases to identify all interviews I have given, but there may be others I have been unable to recall or identify. Clips supplied for all newspaper interviews.

Univision "Aqui y Ahora." The television interview focused on corruption issues along the U.S./Mexico border and specifically documented a case I had prosecuted involving a Border Patrol Agent named Juan Alfredo Alvarez. The interview was conducted in Spanish and was televised in 2008. I have no transcript or recording.

"Accused ex-broker free in lieu of bond," SAN ANTONIO EXPRESS NEWS, Sept. 27,

"Plea deal reached in sex trafficking case for S.A. man," SAN ANTONIO EXPRESS NEWS, Feb. 26, 2008.

"Truck Driver Goes on Trial for Alleged Smuggling," LAREDO MORNING TIMES, May 11, 2000.

Jacque Crouse, "Western District issues its first video sentences," SAN ANTONIO EXPRESS NEWS, February 27, 1998, at 2B.

"School Bars Boy Accused of Killing," AUSTIN AMERICAN-STATESMAN, Nov. 18, 1995

13. <u>Judicial Office</u>: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
 - i. Of these, approximately what percent were:

jury trials: __%
bench trials: __% [total 100%]

civil proceedings: __%
criminal proceedings: __% [total 100%]

- Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a

capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
- 14. <u>Recusal:</u> If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant
 or a party to the proceeding or by any other person or interested party; or if you
 recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a paid position with any political campaign organization or political entity.

I have occasionally allowed my name to be used on public lists of supporters. I recall doing so for Karen Sage, candidate for the 299^{th} District Court of Texas. I may have done so for other candidates I cannot specifically recall or identify.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
 - whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced law alone.

 the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each. 1996 – 1998 Federal Public Defender's Office Western District of Texas 2205 Veterans Blvd, Suite A2 Del Rio, Texas 78840 Assistant Federal Public Defender

1998 – 1999 Federal Public Defender's Office Southern District of Texas 1501 Matamoros Laredo, Texas 78042 Assistant Federal Public Defender

Law Offices of Jesus M. Dominguez 902 Market Street Laredo, Texas 78040

1999 – 2007 United States Attorney's Office Southern District of Texas 1100 Matamoros, 2nd Floor Laredo, Texas 78042 Assistant United States Attorney

Affiliated Attorney

2007 – 2009 Thompson & Knight LLP 4040 Broadway, Suite 615 San Antonio, Texas 78209 Of Counsel

2009
Diamond McCarthy LLP
6504 Bridgepoint Parkway, Suite 400
Austin, Texas 78230
Of Counsel (July 2009)
Partner (August – November 2009)

2009 (November) – Present Reid Davis LLP 4301 Westbank Drive Building B, Suite 230 Austin, Texas 78746 Partner iv. whether you served as a mediator or arbitrator in alternative dispute
resolution proceedings and, if so, a description of the 10 most significant
matters with which you were involved in that capacity.
 I have not served as a mediator or arbitrator in alternative dispute
resolution proceedings.

I have not served as a mediator or arbitrator in any alternative dispute resolution proceedings.

b. Describe:

 the general character of your law practice and indicate by date when its character has changed over the years.

I have dedicated the vast majority of my legal career to public service and have successfully practiced on both sides of the bar. I began my legal career as an Assistant Federal Public Defender and then spent eight years as an Assistant United States Attorney. Since 2007, I have gained experience in civil and commercial litigation as an attorney in private practice.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As an Assistant Federal Public Defender (1996 – 1999), I represented indigent clients who were charged with federal crimes, both felonies and misdemeanors. As an Assistant United States Attorney (1999 – 2007), I represented the government in federal criminal investigations and prosecutions. In private practice (2007 – present), I have represented a broad range of clients including corporate entities, financial institutions, business owners, and individuals who have sought guidance on criminal, civil, and immigration matters.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I estimate that 98% of my criminal and civil practice involved litigation. As an Assistant Federal Public Defender and Assistant United States Attorney, I had daily court appearances, motions hearings, and trials. Since entering private practice in 2007, I have appeared in court occasionally.

5%

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 95%
 - 2. state courts of record:
 - 3. other courts:
 - 4. administrative agencies:

ii. Indicate the percentage of your practice in:

civil proceedings: 20%
 criminal proceedings: 80%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried over 30 jury trials to verdict (approximately half as sole counsel and half as associate counsel).

i. What percentage of these trials were:

1. jury: 98% 2. non-jury: 2%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

- 17. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - a. the date of representation;
 - the name of the court and the name of the judge or judges before whom the case was litigated; and
 - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
 - 1. United States v. Rubio, 321 F.3d 517 (5th Cir. 2003). July August 2000. U.S. District Judge George P. Kazen. Case affirmed on appeal. I was one of three AUSAs co-assigned to prosecute this Hobbs Act public corruption investigation and prosecution of officials of and others connected to the District Attorney's Office in Laredo, Texas. The Jury returned verdicts of guilty against all five defendants (25 out of 27 charged counts) following a five week trial.

My co-counsel were AUSAs Don DeGabrielle and Trey Martinez. Defense counsel included Jose Luis Ramos (for Mr. Rubio Sr.), 107 Garza, Rio Grande City, Texas 78482, Tel: (956) 487-3597; Luis Antonio Figueroa (for Mr. Rodriguez), 1319 Convent, Laredo, Texas, Tel: (956) 724-2889; Salvador Tellez (for Mr. Mendoza), 1102 Scott, Laredo, Texas, Tel: (956) 722-0008; and John Convery (for Mr. Rubio), 1005 South Alamo Street, San Antonio, Texas 78210, Tel: (210) 738-9060.

2. United States v. Cisneros, 72 Fcd. Appx. 161, 2003 WL 21954210 (5th Cir. 2003). December 2001. U.S. District Judge George P. Kazen. Case affirmed on appeal. I was one of two AUSAs co-assigned to prosecute this case, which was part of a Hobbs Act public corruption investigation and prosecution involving the District Attorney's Office in Laredo, Texas. Jury convicted Mr. Cisneros following a four-day trial. The U.S. Court of Appeals for the Fifith Circuit provided further guidance on necessary elements to sustain Hobbs Act conviction adding that depletion of victim's assets was not a requisite element of the crime.

My co-counsel was AUSA Dixie Morrow. Defense counsel was Oscar Pena Sr., 1720 Matamoros St., Laredo, Texas 78040, Tel: (956) 722-5167.

3. United States v. Dimas, 108 Fed. Appx. 927, 2004 WL 2029761 (5th Cir. 2004). May 2002. U.S. District Judge George P. Kazen. Case affirmed on appeal. I was one of two AUSAs co-assigned to prosecute this case, which was part of a Hobbs Act public corruption investigation and prosecution involving the District Attorney's Office in Laredo, Texas. The defendant had been employed as a criminal investigator at the District Attorney's Office. He was convicted by a jury for his role in the conspiracy.

My co-counsel was AUSA Dixie Morrow. Defense counsel was Eduardo Jaime, 1800 Victoria St., Laredo, Texas 78040, Tel: (956) 725-9714.

4. United States v. Botello, 108 Fed.Appx. 979, 2004 WL 2095639 (5th Cir. 2004). December 2002. U.S. District Judge George P. Kazen. I was one of two AUSAs coassigned to prosecute defendants for possession and distribution of 540 pounds of marijuana. The case involved cooperating defendants and consensual tape recordings. Following a three-day trial, the jury returned guilty verdicts as to both defendants on the conspiracy charges. The case was affirmed on appeal.

My co-counsel was AUSA Noelle Dimarco. Defense counsel included Fernando Sanchez (for Mr. Botello), 401 E. Hillside 2nd floor, Laredo, Texas 78041, Tel: (956) 722-0707; and Oscar A. Vela, Jr. (for Mr. Vasquez), 1800 Victoria St., Laredo, Texas 78040, Tel: (956) 725-9714.

5. United States v. Hernandez, 202 Fed. Appx. 708, WL 2930198 (5th Cir. 2006). August 2004. U.S. District Judge Keith P. Ellison. I was the sole prosecutor charging this multi-Defendant case stemming from Organized Crime Drug Enforcement Task Force (OCDETF) investigation of the Julian Ramirez drug trafficking organization. The case involving drug and money scizures, cooperating defendants, taped conversations,

and controlled deliveries. The jury trial lasted seven days. One Defendant was granted a Rule 29 by Judge Ellison during the trial. The other three defendants were found guilty by the jury. All convictions have been affirmed on appeal.

Defense counsel included Luis Antonio Figueroa (for Mr. Hernandez), 1319 Convent, Laredo, Texas, Tel: (956) 724-2889; David Almaraz (for Mr. Wildenborg), 1802 Houston St., Laredo, Texas, Tel: (956) 727-3828; Alonzo Ramos (for Mr. Thomas), 1102 Scott Suite 5B, Laredo, Texas, Tel: (956) 712-1259; and Javier Montemayor (for Mr. Morales) 1814 Victoria, Laredo, Texas, Tel: (956) 726-8811.

6. United States v. Peña Hinojosa, No. 06-CR-123-2 (S.D. Tex.). April 2006. U.S. District Judge Donald Walter, sitting by designation. I was the sole prosecutor charging this drug trafficking case, for conspiracy to distribute and possession of 140 pounds of cocaine. The case was part of large-scale Organized Crime Drug Enforcement Task Force (OCDETF) investigation. Following a four-day trial the jury found the primary defendant guilty and his co-defendant not guilty.

Defense counsel were Salvador Tellez (for Mr. Peña Hinojosa), 1102 Scott, Laredo, Texas, Tel: (956) 722-0008; and Oscar O. Peña (for Mr. Saldaña), 1720 Matamoros St., Laredo, Texas 78040, Tel: (956) 722-5167.

7. United States v. Ramirez-Olivas, No. 06-CR-123-4 (S.D. Tex.). April 2006. U.S. District Judge George P. Kazen. I was the sole prosecutor charging this drug trafficking case, for conspiracy to distribute and possession of 791 pounds of marijuana. Following a four-day trial, the jury found the defendant guilty.

Defense counsel were Teresa Hunter and Amador Gutierrez, 1010 Juarez, Laredo, Texas, Tel: (956) 722-8065.

8. United States v. Garcia, No. 05-CR-1659 (S.D. Tex.). May 2006. U.S. District Judge George P. Kazen. I was the sole prosecutor charging this drug trafficking case, for conspiracy to distribute and possession of more than 1,413 kilograms of marijuana. Law enforcement considered the defendant the direct link to the source of narcotics supply in Mexico. Following a fourt-day trial, the jury found the defendant guilty and Judge Kazen sentenced him to 30 years imprisonment.

Defense counsel was J. Eduardo Peña, 1102 Scott St., Laredo, Texas 78040, Tel: (956) 722-9854.

9. United States v. Obregon, No. 07-CR-452 (S.D. Tex.). August 2007. U.S. District Judge George P. Kazen. I was associate counsel (as supervisory "second chair") in this prosecution for conspiracy to kidnap, kidnapping, and use of a firearm during a crime of violence. The case involved a confrontation at the primary defendant's residence that resulted in the victim being assaulted, tied up, and eventually driven from the residence into Nuevo Laredo, Tamaulipas Mexico, where the victim was shot in the face and torso and left for dead by other co-conspirators. The victim survived, made his way back to the

United States and testified at the trial. Following a six-day trial, the defendants were convicted on all counts.

My-counsel was AUSA Gracie Lindberg. Defense counsel were Robert Berg (for Mr. Obregon), 3833 Alameda St., Corpus Christi, Texas 78205, Tel: (361) 814-0744; Ruben Cabrera: Javier Montemayor (for Mr. Cabrera), 1814 Victoria, Laredo, Texas, Tel: (956) 726-8811; and Oscar O Peña (for Mr. Cardenas), 1720 Matamoros St., Laredo, Texas 78040, Tel: (956) 722-5167.

10. State of Texas v. Roberts (226th District Court, San Antonio, Texas). December 2007. District Judge Sid Harle. I was co-defense counsel to Ms. Roberts, who was charged with helping her husband blackmail four of her former lovers. The couple was charged with theft and accused of extortion of \$155,000 from the married men that Ms. Roberts had extramarital affairs with over a two-month period. After Mr. Roberts learned of the affairs, he threatened the mcn that he would expose their infidelities in court unless they agreed to pay him. Ms. Roberts was found guilty by a jury on all counts and sentenced to ten years probation.

Prosecutors were Assistant District Attorneys Tamara Strauch and Bill Pennington, 100 Dolorosa, San Antonio, Texas 78205, Tel: (210) 335-2311. My co-counsel were Michael McCrum and Alan Brown.

18. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

My current work at Reid Davis LLP focuses on complex commercial cases. For example, I am involved in the investigation and prosecution of civil RICO claims on behalf of foreign sovereigns who have been impacted by the illegal smuggling of goods by multi-national companies engaged in money laundering activities. We work closely with U.S. Attorney's Offices and government agents who are conducting parallel criminal prosecutions. I am also involved in assisting a financial institution to investigate large scale embezzlement schemes by employees, and to coordinate the civil suits against the employees and the cooperation with law enforcement on the criminal prosecutions.

In 2007, I joined Thompson and Knight LLP as one of three core members of a newly formed white collar defense group. Legal work focused primarily on complex federal and state criminal defense matters, including numerous high-profile criminal cases, public corruption matters, criminal tax fraud, health care fraud, securities fraud and mortgage fraud. I also assisted companies with internal fraud investigations. In one particular matter, I represented a national insurance company with an internal administrative investigation of one of its employee involved in an elaborate

embezzlement scheme. Representation required coordinated efforts with the Texas Department of Insurance. In another significant matter, I represented a major company involved in the marketing and distribution of petroleum in a claim for liquidated damages for removal of merchandise from a foreign trade zone without CBP authorization. The appeal process and extensive negotiations with CBP Fines, Penalties, and Forfeitures resulted in the fine being mitigated by 90%.

During my eight year tenure as an Assistant United States Attorney (1999-2007), I was responsible for the prosecution of hundreds of reactive and long-term investigations involving public corruption, illegal narcotics, money laundering, firearms, human trafficking, and in-bond diversion/merchandise smuggling. I was assigned to the Organized Crime Drug Enforcement Task Force (OCDETF) where I focused on the prosecution of complex narcotics and money laundering investigations. I was tasked with daily multi-agency and multi-jurisdictional coordination efforts in conducting investigations aimed at dismantling major drug organizations. I was the lead prosecutor in numerous Title III electronic surveillance and grand jury investigations and initiated the first Title III electronic surveillance investigation for Immigration and Customs Enforcement (ICE) in the Southern District of Texas. More than 30 Defendants were convicted as a result of said investigation which resulted in multi-ton seizures of narcotics and other goods derived from illicit sources. I have also served as a member of the office's Indictment Review Committee which screens and approves all cases before they are presented to the grand jury. During my tenure as an AUSA, I was consistently recruited by the Department of Justice's OPDAT (Office of Overseas Prosecutorial Development, Assistance and Training) program to teach trial advocacy skills to foreign prosecutors and agents in Colombia and the Dominican Republic.

In 1996, I was hired out of law school to join the Federal Public Defender's Office in the Western District of Texas, which is one of the highest volume districts in the countries. During my three years as an Assistant Federal Public Defender in both the Western and Southern Districts of Texas, I was responsible for the representation of hundreds of indigent criminal defendants charged with federal criminal violations. I handled every stage of the case from meeting with clients and their families, to researching issues, drafting and arguing pre-trial motions, and appearing in court for motions hearings, arraignments, trials, guilty pleas and sentencing proceedings.

I have not performed any lobbying activities on behalf of any client or organization.

19. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have been recruited on numerous occasions by the Department of Justice Office of Overseas Prosecutorial Development Assistance and Training to teach trial advocacy to prosecutors and agents (both state and federal). Albuquerque, New Mexico 2001 and 2002 Bucaramanga, Colombia, 2005 Santo Domingo Dominican Republic, 2006 and 2007

20. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am entitled to conditional future benefits from Diamond McCarthy LLP, my former law firm, based on ten percent of any recovery (net of expenses) in a probate case.

If confirmed, I would sever my partnership with Reid Davis LLP, my current firm. Pursuant to my employment agreement, I would be entitled to conditional future benefits for work performed based on recovery in matters on which I have worked while at the firm.

21. <u>Outside Commitments During Court Service</u>: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments or agreements to pursue outside employment, with or without compensation, during my service with the court.

22. <u>Sources of Income</u>: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. <u>Statement of Net Worth</u>: Please complete the attached financial net worth statement in detail (add schedules as called for).

See Attached Net Worth Statement

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My sister is Corporate Counsel for BBVA Compass (formally known as the Laredo National Bank) in Laredo, Texas. If confirmed, I would recuse myself in any matter involving said entity.

It is possible that criminal cases in which I had involvement as an Assistant United States Attorney may come before the Court. I expect that there would be relatively few such cases given that I left the United States Attorney's Office in 2007, but I would recuse myself on any matter in which I had involvement during my time as a federal prosecutor.

 Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed as a District Judge, I would follow the recusal statutes and the Code of Conduct for United States Judges, as well as any other guidance from the courts, in addressing any matter the could involve actual or apparent conflicts of interests. As needed, I would consult with colleagues and/or seek formal guidance from ethics officials at the Administrative Office of U.S. Courts.

25. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During the first eleven years of my legal career, I worked for the government and was not permitted to work on any problem matters due to conflict of interest. During my three-year tenure as an Assistant Federal Public Defender, I represented indigent clients charged with crimes.

Since joining the private sector in 2007, I have worked on several pro bono matters including the following cases:

- I represented a client charged with criminal violations in two different jurisdictions (Bexar and Kendall counties). Due to her extremely poor financial condition, and the fact that she would not otherwise receive adequate representation, I assisted Attorney Michael McCrum in representing Ms. Lalley on a pro bono basis. A significant amount of time was devoted in attending court hearings in each county, reviewing evidence, meeting with the client, and visiting the respective district attorney's offices. The case took more than a year to resolve.
- 2. I represented a client charged with criminal violations in Bexar County. Due to the nature of the allegations and the heightened publicity surrounding the case, my client was left without a source of income and the ability to defend herself. As such, we agreed to represent her on a pro bono basis. The case took many months of preparation and involved extensive review of documents, research, drafting motions,

meetings with witnesses and client, and court hearings. The trial in the matter, State v. Roberts, lasted a week in December 2007.

3. I represented an adult woman and her two minor children who were victimized by the woman's ex-husband and were in need of attorney representation. My client was unemployed and did not have the ability to hire counsel. I served as a liaison between my client and the District Attorney's Office. I spent a significant amount of time meeting with this client and conveying information on her behalf to the District Attorney's Office.

In March 2010, I volunteered to serve as a judge for the Hispanic National Bar Association's (HNBA) National Moot Court competition which took place in San Diego, California and lasted several days. During my tenure at Thompson and Knight LLP, I also volunteered my time to train young associates and participated as a judge during the firm's moot court training program for associates.

26. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I submitted an application to U.S. Senator Kay Bailey Hutchison in November 2008. In January 2009, I also submitted letters of interest to Sen. Hutchison and to Senator John Cornyn, as well as to senior members of the Texas Democratic congressional delegation.

In January 2009, I interviewed with U.S. Congressman Henry Cuellar in Washington, D.C. In October 2009, I was recommended for nomination to the President by the Texas Democratic Delegation.

In November 2009, I was interviewed by the Senators' Judicial Screening Committee in San Antonio, Texas. In January 2010, I was interviewed by Senators Hutchison and Cornyn in Washington, D.C.

In December 2009, I submitted an application and request for endorsement to the Hispanic National Bar Association (HNBA). The HNBA endorsed my candidacy in March 2010.

Since March 2010, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed with attorneys from the White House Counsel's Office and from the Department of Justice in Washington, D.C., on May 19, 2010. The President submitted my nomination to the Senate on July 28, 2010.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10 FINANCIAL DISCLOSURE REPORT Report Required by the Ethics

Rev. 1/2008	NO	MINATION FILING	In Governmens Act of 1978 (5 U.S.C. app. §§ 101-111)			
1. Person Reporting (last to	une, first, middle initial)	2. Court or Organization	3. Date of Report			
Garcia Marmolejo, Mari	114	U.S. District Court, Southern District of Texas	07/28/2010			
4. Tale (Article III judges in megistraie judges ins	dicate active or action status; ticate full- or part-time)	Sa. Report Type (check appropriate type)	6. Reporting Period 01/01/2009			
U.S. District Judge		Nomination, Date 01/01/2009 to 06/30/2010 Sa. Amended Report				
7. Chambers or Office Add 4301 Westbank Drive, S Austin, Texas 78746		R. On the heads of the information contained in this Report positional perceiving therein, it is, to my opinion, in with applicable lever and regulations. Reviewing Officer.	and my compliance			
		e instructions accompanying this form must be followed. Camp ench peet where you have no reportable information. Sign on to				
NONE (No re	portable positions.) <u>POSITION</u>	NAME OF ORG	ANIZATION/ENTITY			
. Of Counse) (resigned p	neition July 2009)	Thompson & Knight LLP				
. Partner (realgned position	on November 2009)	Dismond McCarthy LLP				
. Partner		Reld Davis LJ.P				
j. 5.						
_	TS. (Asporing tráinléad only, see , portable agreements.)	up. 14-16 of filing instructions.)				
DATE		PARTIES AND TERMS				
. 2009	Тьоторков &	Knight LLP Retirement plan with former law form, no control				
. 2009	Diamond Ma co cases for i	Curthy LLP Retirement plan with former law firm, no exerted; Fi egal services previously rendered	xed percentage agreement contingency			
. 2009-2010	Reid Davis L	1.P. Fixed percentage agreement on contingency for cases for leg-	al services rendered			

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FINANCIAL DISCLO	SURE REPORT	Name of Forest Repor	_		Data of Pepori
Page 2 of 8		Garcia Marmoleja	Marina		07/28/2010
III. NON-INVESTME	NT INCOME. (Reports	g landirkland navê apopese; pe	n yes. 17-24 of filling Instruction	N	
A. Filer's Non-Investment I	income				
_	e non-investment income.)				
DATE		SOURCE AND	TYPE		INCOME rs, not spouse's)
1.2008	Thompson & Knigh	t LLP-previous law for	n salary	***	\$220,000.00
2. 2009	Thompson & Knigh	d LLP-previous law fire	nahery .		\$220,000.00
3, 2009	Dismond McCertby	LLF-previous law firms	salary		\$229,000.00
4. 2009	Reid Davis LLP-can	rent hw firm salary			\$150,000.00
5. 2009	Reid Davi LLP-com	ent law firm bonus			\$15,000.00
6. 2010	Reid Davis LLP-cas	rest less firm talony		-	\$150,000.00
7. 2010	Reid Davis LLP-cus	Reid Davis LLP-current law from bonus			\$15,000.00
8.					
B. Spouse's Non-Investment (Dollar amount not required except for he NONE (No reportable) DATE		during any parties of the s		ries.	
1.					
2.					
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IV. REIMBURSEMEN					
NONE (No reportable	reimbursements.)				
SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAI	OR PROVIDED
), Exempt					
2.					
3					

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 3 of 8	Garcia Marmoleja, Marina	07/28/2010
4.		
5.		
FINANCIAL DISCLOSURE REPORT	Name of Person Reputage	Date of Report
Page 4 of 8	García Marmolejo, Marian	07/28/2010
V. GIFTS. (Includes threat to apounce and dependent children; nos y	np. 28-31 of filling instructions.)	
NONE (No reportable gifts.)		
SOURCE	DESCRIPTION	YALUE
1. Exempt		
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VI, LIABILITIES. (Includes State of Systems and Separations	children assum 31.31 of different heavy referent	
NONE (No reportable liabilities.)		
CREDITOR	DESCRIPTION	VALUE CODE
1. Bank of America Credit Card		<u> </u>
2. American Express Credit Card		<u> </u>
3. US Bank Credit Card		1
4. Wells Fargo Mortgage on Rent	а) Рторску	м

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Dere of Report
Page 5 of 8	Garcia Marmolejo, Marina	07/28/2010

VII. INVESTMENTS and TRUSTS - become, value, see

	A. Description of Assets (including trust search)	R, Accuracy charing reposting period		C. Chross value at end of reporting period		D. Transactions during reporting period				
	Place "(X)" after each seast excesses from prior disclosure	(I) Amount Code I (A-H)	(2) Typa (a.g., div., root, or ink.)	(1) Valtos Codo 2 (I-P)	(2) Value Mostrod Code 3 (Q-W)	(1) Type (a.g., boy, sell, redomption)	(2) Duin Mouth - Duy	(3) Value Code 2 (J-V)	(4) Onin Code 1 (A-H)	(5) Identify of buyerfæller (if privero unersaction)
-	Rental Property, Laredo, TX 2005, \$320,000	A	Rent	N	R	Exempt				
l.	Texas Temorrow Fund educational plan for children		None	K	т					
١,	Dodge & Cox Stock	С	Dividend	1	Т					
l.	Capital Income Bidr CL A	A	Dividend	,	T	****				
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	Fundamental INVS INC CLA	^	Dividend	,	Т					
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1.	T. Rowe Price Blue Chip Growth	٨	Dividend	ı	T					
2.	IP Morgan Mid Cap Value I	^	Dividend	,	т					
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9-\$1,501-\$2,500 G-1,00,601-\$1,600,000 K-\$15,001-\$50,000 O-\$500,001-\$5,000,000

C=ELS01=35,000
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FINANCIAL DISCLOSURE REPORT Page 6 of 8			•	Name of Person Reporting Garcia Marmolejo, Marina					Date of Report 07/28/2010	
VI	L INVESTMENTS and T NONE (No reportable incom-				/h/	o of spaces and d	l y d.u ch	بير زيينفك	. J. 34-61	of filling last actions.)
A. Description of Assets (including trust assets)		B. Income during coporting period		Gross val	C. Gross value at end of supporting period		D. Transactions during expecting period			posiod
Place "(X)" after each swet exempt from prior disclosure	(I) Amount Code I (A-H)	(Z) Typn (o.g., div., mos. or ind.)	(1) Value Code 2 (I-P)	(2) Value Method Code 3 (Q-W)	(1) Typo (c.g., inty, sell, rodesoption)	(2) Date Month - Day	(3) Value Cade 2 (I-P)	(4) Getta Code 1 (A-FE)	(5) Identity of buyenholior (if private treascation)	
18.	Artisen Mid Cap Value Fund	С	Dividend	1	τ		Т	T	<u> </u>	
19.	Fidelity Small Cap Stock	В	Dividend	1	T		 			
20,	AF Europacific Growth A	В	Dividend	1	Т		<u> </u>			
21.	FID Diversified International	ъ	Dividend	3	T					
22.								\vdash		

I, Isomo Guin Codon (See Coheses St and D4) 2. Value Codon (See Coleman C) and D3) A = \$1,000 or loss F = \$50,001 - \$100,000 J = \$13,000 or loss N = \$250,001 - \$500,000 PJ = \$23,000,001 - \$20,000,000 Q = Appraisal U = \$500t Valve B-\$1,001 - \$2,500 G-\$100,001 - \$1,600,000 K-\$15,003 - \$50,000 G-\$50,001 - \$1,000,000

\$50,000 L =\$50,001 - \$100,000 -\$1,000,000 P1 - \$1,000,001 - \$1,000 P4 - Micro Shan \$50,000,0 P - Micro Shan \$50,000,0 P - Micro Shan \$50,000,0 57 -53,001 - 511,000 H2 -56ms than \$5,000,000 M -8100,001 - 5250,000 P2 -85,000,001 - 525,000,000

E-\$15,001 - \$50,000

T : Code Market

FINANCIAL DISCLOSURE REPORT	Nume of Person Reporting	Date of Report
Page 7 of 8	Garcia Marmolejo, Marina	07/28/2010

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Papert)

FINANCIAL DISCLOSURE REPORT	Name of Person Percenting	Date of Report
Page 8 of 8	Gercia Marmoleje, Martus	07/28/2010
		1 1

IX. CERTIFICATION.

I curtify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) in secrets, true, and complete to the best of my knowledge and belief, and that my information not reported was withheld because it met applicable statutory providing permitting non-disclosure.

I further curtify that current income from cutchin complayment and honorcurin and the accompance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. upp. § 501 et. veq. 5 U.S.C. § 7253, and Judicial Conference regulations.

Signature 7914

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (S U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES			
Cash on hand and in banks	5	200	Notes payable to banks-secured		36	500
U.S. Government securities—EE Bonds	Government securities—EE Bonds 4 200 Notes payable to banks-unsecured		Notes payable to banks-unsecured		17	000
Listed securities—see schodule	27	521	Notes payable to relatives			
Unlisted securities			Notes payable to others			
Accounts and notes receivable:			Accounts and bills due		47	000
Due from relatives and friends	25	000	Unpaid income tax			
Due from others			Other unpaid income and interest			
Doubtful			Real estate mortgages payable—see schedule		487	000
Real estate owned—see schedule	700	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable			Other debts-itemize:			
Autos and other personal property	80	000	Student Loans		13	000
Cash value-life insurance						
Other assets itemize:						
Thrift Savings Plan Account	128	738				
			Total liabilities		600	500
			Net Worth		370	159
Total Assets	970	659	Total liabilities and net worth		970	659
CONTINGENT LIABILITIES			GENERAL INFORMATION			
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	NO		
On leases or contracts			Are you a defendant in any suits or legal actions?	NO		
Logal Claims			Have you ever taken bankruptey?	Ю		
Provision for Federal Income Tax						
Other special debi						

894

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Vanguard Value Index Signal	\$ 274.72
Vanguard 500 Index Signal	425.14
T. Rowe Price Blue Chip Growth	561.64
JP Morgan Mid Cap Value I	153.85
Vanguard Mid Cap Index	457.15
T. Rowe Price Mid-Cap Growth	469.19
Vanguard Explorer	303.45
William Blair International Growth I	290.49
AF Fundamental Inv. A	4,986.11
AF Growth Fund Amer. A	4,967.47
Dodge & Cox Stock	4,702.84
Artisan Mid Cap Value Fund	3,853.90
Fidelity Small Cap Stock	1,445.10
AF Europacific Growth A	2,425.40
FID Diversified International	2,204.05
Total Listed Securities	27,521
Real Estate Owned	
Personal residence	\$ 380,000
Rental property	320,000
Total Real Estate Owned	700,000
Total Real Estato C Miles	700,000
Real Estate Mortgages Payable	
Personal residence	\$ 258,000
Rental property	229,000
Total Real Estate Owned	487,000

AFFIDAVIT

I, MARINA GARCIA MARMOLEJO, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

8/4/10

(NAME)

Commonwealth/State of According to the foregoing instrument was subscribed and export before me this 122 day of Course 1

(neine pi person sseking admented ment)

Notary Public

Notary Fublic

Thy commission expires: 3/14/2013

MARINA GARCIA MARMOLEJO 614 CYPRESS TRAIL SAN ANTONIO, TEXAS 78256

January 5, 2011

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate Washington DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination of July 28, 2010, to be United States District Judge for the Southern District of Texas. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

Q. 3-Address:

Office address is the same. However, name of firm has changed from Reid Davis LLP to Reid Collins Tsai LLP.

Q. 6- Employment Record:

Reid Collins Tsai LLP (September 2010-present)
Reid Davis LLP (November 2009- September 2010)

Q. 8- Honors and Awards: Additional Honors and Awards received Super Lawyers, Texas Rising Stars (2011) Hispanic Business: The 100 Influentials-Thought Leaders (2010)

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely.

Marina Garcia Marmolejo

cc: The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate, Washington DC 20510

AO 10 Rev. 1/2008

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

RCC. 772003	ACMINATION FILING	(3 U.S.C. app. §§ 101-111)				
1. Person Reporting (last tome, first, middle in)	nial) 2. Court or Organization	J. Date of Report				
Garcia Marmotejo, Marina	U.S. District Court, Southern District of Texas	01/05/2011				
Олем машокуо, мани	San Daniel Comp Southern Desire of Teas					
 Tide (Article III judges indicate active or seni- magistrate judges indicate full- or part-ti- 	ne)	6. Reporting Period				
U.S. District Judge	Nomination, Date 01/05/2011	01/01/2010				
- io monte out go	Initial	12/31/2010				
7. Chambers or Office Address	8. On the basis of the information contained in this Rep-	ort and any				
4301 Westbank Drive, Suite B230 Austin, Texas 78746	modifications pertulating thereto, it is, in my opinion, with applicable laws and regulations.					
	Reviewing Officer	Date				
	T NOTES: The instructions accompanying this form must be followed. Co. e NONE hax for each part where you have no reportable information. Sign or					
. POSITIONS. (Reporting individual	ol only; see pp. 9-13 of filing instructions.)					
NONE (No reportable posit	ions.)					
POS	SITION NAME OF OR	GANIZATION/ENTITY				
Partner (resigned position September 201	0) Reid Davis LLP					
. Partner	Reid Collins Tsai LLP					
A						
•						
comparation						
-	ndividual only; see pp. 14-16 of filing instructions.)					
NONE (No reportable agree	ements.)					
DATE	PARTIES AND TERMS					
. 2009	Thompson & Knight LLP References plan with former law firm, no control	•				
2009	Diamond McCarthy LLP Retirement plan with former law firm, no control; or cases for legal services previously rendered	Fixed percentage agreement contingence				
, 2009-2010	Reid Davis LLP-Fixed percentage agreement on contingency for cases for	egal services previously rendered				
, 2010	Reid Collins Tsei LLP-Fixed percentage agreement on contingency (ce cases for legal services rendered					

FINANCIAL DISCL	OSURE REPORT	Name of Person Repor			Date of Report	
Page 2 of 8		Garcia Marmolija	, Marks	· .	01/05/2011	
III. NON-INVESTMI	ENT INCOME. (Reporting	: Individual and spouse; se	e pp. 17-24 of fliing instruction	nL)		
A. Filer's Non-Investment						
	le non-investment income.)					
DATE		SOURCE AND	TYPE		INCOME irs, not apouse's)	
1, 2009	Thompson & Knigh	t LLP-previous law fire	n salery		\$127,284.00	
2. 2009	Diamond McCarthy	LLP-previous law firm	salary		\$46,740.00	
3. 2009	Reid Davis LLP-pre	vious law firm salary			\$25,900.00	
4, 2009	Reid Davis LLP-pre	vious law firm bonus		***************************************	\$15,000.00	
5. 2010	Reid Davis LLP-pro	vious law firm salary			\$112,500.00	
6. 2010	Reid Davis LLP-pre	vious law (irm bonus			\$15,000.00	
7. 2010	Reid Collins Tsai Li	.P-corrent low firm sala	ry		\$25,000.00	
8						
<u>DATE</u>		during any portion of the t		ectan.		
2.	THE PROPERTY OF THE PERSON OF				· · · · · · · · · · · · · · · · · · ·	
3.	**************************************			······································		
4.						

IV. REIMBURSEME. (Includes thate in spouse and dependent NONE (No reportable)	t children; see pp. 25-27 of filing instru					
SOURCE	<u>DATES</u>	LOCATION	PURPOSE	ITEMS PAI	O OR PROVIDED	
t. Exempt						
2.			W			

FINANCIAL DISCLOSURE REPO	RT Name of Person Reporting	. Date of Report
Page 3 of 8	" Garcia Marmotoja, Marina 🐪 📈 "	01/05/2011
4.		
5 .		
•		
FINANCIAL DISCLOSURE REPO	RT Name of Persoa Reporting	Date of Report
Page 4 of 8	Garcia Marmolejo, Marins 💎 🛷 🛷	, j 01/05/2011
V. GIFTS. Ancivdes these to spouse and dependent child	tren; sec pp. 28-31 of filing transactions.)	
NONE (No reportable gifts.)		
SOURCE	DESCRIPTION	YALUE
1. Exempt		
2.		
3.		
4.		
5.		
VI. LIABILITIES. (Includes those of sponse and a NONE (No reportable liabilities.)	lependens children; see pp. 32-33 of filing instructions.)	
CREDITOR	DESCRIPTION.	VALUE CODE
Bank of America Credit Car	d	. к
2, American Express Credit Car	d	ı
3. Wells Fargo Mortgage	on Rental Property	М
4.		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
Page 5 of 8	Garene Marmolejo, Marina	01/05/2011

VII. INVESTMENTS and TRUSTS - Income, value, transactions (includes those of sponse and dependent children; see pp. 34-60 of filling busturations.) NONE (No reportable income, assets, ar transactions.) C. Gross value at end of A. Description of Assets (including trust assets) B. Incorae during Transactions during reporting period reporting period (i) (2) Amount Type (e.g. div., period) (A-H) or int.) (5) Identity of buyer/seller (if private transction) (2) Type (e.g., div., rent, or ist.) (2) Value Method Code 3 (Q-W) (i) Type (e.g., buy, sel), redemption) (3) (4) Value Gain Code 2 Code 1 (J-P) (A-H) (1) Value Code 2 (J-P) Place "(X)" after each asset exempt from prior disclosure 1. Rental Property, Laredo, TX 2005, \$320,000 N Α Rent R Exempt Texas Guaranteed Tuition Plan (prepaid/no control) K T None 3. Dodge & Cox, Stock Fund Dividend T 4. American Funda, Capital Income Bldr CL A ¢ Dividend 5 Т American Funds, Capital World Growth & Jocome FD Ize CL A С Dividend 1 American Funds, Fundamental INVS INC Dividend j Т American Funds, New World Fund CL A NEWFX С Dividend J T 8. American Funds, Growth Fund. Amer. A Dividend Т D 9. Vanguard, Value Index Signal Dividend T 10. Vanguard, 500 Index Signal Dividend т Λ j 11. T. Rowe Price, Blue Chip Growth A Dividend 12. JP Morgon, Mid Cap Value I Dividend Т 13. Vanguard, Mid Cap Index Dividend Α J т 14. T. Rowe Price, Mid-Cap Growth Dividend Ť 15. Vanguard, Explorer Т Dividend Α 16. William Blair, International Growth I Dividend 17. American Funds, Fudamental Inv. A Dividend J T E-\$15,001 - \$50,000 5,000,000 5,000,000 525,000,000

	1, Income Guin Codes:	A =51,000 or less	B ~51,003 -57,500	C-\$1,50t - \$5,000	D =35,001 - \$15,000
í	(See Columns D1 and D4)	F =\$50,001 - \$100,000	G~\$100,001 - \$1,000,000	111 -21,000,001 - 22,000,000	112 -More than \$5,0
	2, Value Codes	I =\$15,000 or form	K -\$15,001 - \$50,000	1. =630,001 - \$100,000	M =5100,003 - 5250
	(See Columns C1 and D3)	N -5250,001 - \$500,000	000,000,12 - 100,0022~ 0	000,000,22 - 100,000,12= 17	12 =55,000,001 - 52
		P3 -525,000,001 - \$50,000,000		P4 -More than \$50,000,000	
	3. Value Method Codes	Q ~Approximal	R -Coct (Real Ecrate (July)	S =Assessment	T -Cash Market
	(See Column (2)	U~Book Value	V=0sber	W = Estimated	

FINANCIAL DISCLOSURE REPORT Page 6 of 8				Name of Person Reporting Garcia Murmolejo, Marina						Date of Report 01/05/2011	
VII	I. INVESTMENTS and TRU NONE (No reportable income, a		-		(Includes tha	te of spouse and d	spendent ch	Udren; sei	рр. 34-60	of filling (restructions.)	
	A. Description of Assets Inc. (including must assets) repo					D. Transactions during reporting period				period	
	Place "(X)" after each asset exempt from prior disclasure	(1) Amount Code 1 (A-II)	(2) Type (c.g. div., real, or int.)		(2) Value Method Code 3 (Q-W)	(!) Type (e.g., buy, sell, rederoption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)	
18.	Artisan , Mid Cap Value Fund	С	Dividen	t t	Ť						
19.	Fidelity, Small Cap Stock	В	Dividen	1 1	т						
20,	American Funds, Europscific Growth A	С	Divident	i J	т						
21,	Fidelity, Diversified International	С	Divident	1)	т						
22.											

1. hence Gris Colec:							
2. Value Codes	1. Income C	Tain Coder:	A -S1,000 or less	n -s1,001 - \$2,500	C=\$2,501 - \$5,000	D =\$5,001 - \$15,000	E =\$15,001 - \$50,000
(See Columns C1 and D3) N=C250,001 - \$500,000 O =\$500,000 -51,000,000 P1 =51,000,000 P2 =55,000,000 P2 =55,00	(See Colv	orsize Bit and O4)	F-550,001 - 5100,000	000,000,12 - 100,0012= 0	H1 -51,000,001 - \$5,000,000	312 =More (ban \$5,000,000	
P) =525,000,001 = 550,000,000 P4 =More than \$50,000,000 J. Value Method Codes Q =Apprainal R =Cost (Red Easts Only) S =Austrament T =Cash Murbor	2. Value Co	odcs.	J =515,000 or less	K -\$15,001 - \$30,000	L ~\$50,001 - 5100,000	M -5100,001 - \$7250,000	
J. Value Method Codes Q = Appyrainal R = Cost (Real Estate Only) 5 = Auseysmenn T = Cash Murber	(See Colu	umps Cl and D3)	N~5250,001 - \$500,000	O-\$500,001 - \$1,000,000	900,000,t2 - 100,000,t2= 11	P2 ~55,000,001 - 525,000,000	
			P3 -\$25,000,001 - \$50,000,000		P4 =More than \$50,000,000	•	
(See Cohana C1) U = Beok Value: V = Other W = Estimated	3. Value Me	chod Codes	Q =Appraisal	R -Cost (Real Estate Only)	5 *Ausquinem	T-Cash Meeter	
	(See Cata	em (C)	U =Book Yaha:	V =Osber	W = Estimated		

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting "Garcia Marmolejo, Marina 11800 200 300 300 500	Date of Report 01/05/2011				
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Report)						

FINANCIAL DISC	LOSURE REPORT	Name of Person Reporting	Date of Report
Page 8 of 8	Marieta jar 1	Garcia Marmolejo, Marina	01/05/2011

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that carned income from outside employment and honoraria and the acceptance of glits which have been reported are in compliance with the provisions of S U.S.C. app. § 501 et. seq., S U.S.C. § 7353, and Judicial Conference regulations.

Signature LILLY

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.B. Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES				
Cash on hand and in banks		5	200	Notes payable to banks-secured		29	800
U.S. Government securities—EE Bonds		4	200	Notes payable to banks-unsecured		17	000
Listed securities—see schedule		50	834	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		36	000
Due from relatives and friends		25	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payablesee schedule		463	000
Real estate owned—see schedule		700	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		80	000	Student Loans		13	000
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan Account		163	826				
				Total liabilities		558	800
				Net Worth		470	260
Total Assets	i	029	060	Total liabilities and net worth	1	029	060
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptey?	NO		
Provision for Federal Income Tax							
Other special debt							

904

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Vanguard Value Index Signal	\$ 345
Vanguard 500 Index Signal	524
T. Rowe Price Blue Chip Growth	715
JP Morgan Mid Cap Value I	191
Vanguard Mid Cap Index	587
T. Rowe Price Mid-Cap Growth	594
Vanguard Explorer	399
William Blair International Growth I	360
AF Fundamental Inv. A	6,160
AF Growth Fund Amer. A	6,073
Dodge & Cox Stock	5,818
Artisan Mid Cap Value Fund	4,688
Fidelity Small Cap Stock	1,882
AF Europacific Growth A	2,971
FID Diversified International	2,755
AF Capital Income Blder CL A	3,993
AF Capital World Growth CL A	4,078
AF Fundamental Invs CL A	4.211
AF New World Fun CL A	4,490
Total Listed Securities	\$ 50,834
	,
Real Estate Owned	
Personal residence	\$ 380,000
Rental property	320,000
Total Real Estate Owned	\$ 700,000
Total Notice Estate Owned	\$ 700,000
Real Estate Mortgages Payable	
Personal residence	\$ 237,000
Rental property	226,000
Total Real Estate Owned	\$ 463,000
	,

STATEMENT OF MICHAEL C. GREEN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK

Mr. Green. Thank you. I would also like to start by thanking the President for the honor of this nomination. I'd like to thank Senator Schumer for recommending me and for his support, and I'd like to thank his staff for all the work that they've done on my behalf. I would like to thank you, Senator, and all of the members of this Committee and Senator Grassley for providing me the opportunity to have this hearing. I would like to also thank Senator Gillebrand for her support throughout this process.

Just briefly, if I can introduce my family and some friends here with me. I have my wife Karen here with me, my daughter Victoria, who's a junior at Pittsford-Menden High School. My older daughter Megan could not be with us; she's studying abroad in

Spain right now and I believe watching on the webcast.

I also have my parents, George and Carol Green with us today. I have a good friend, Mike Donoghue, who's here, and another good friend, Sarah Clark, who's also on Senator Gillebrand's staff, and a long-time assistant, my long-time assistant and friend, Karen Farsace, who's here.

I would also like to acknowledge many special friends at home who I believe are watching. I'd like to acknowledge many family members who couldn't be here who are watching. And finally, I would like to acknowledge my staff at the Monroe County District Attorney's Office. It's just an outstanding group of public servants. I want to thank them and acknowledge them as well.

Senator Klobuchar. Well, thank you very much, Mr. Green. We welcome your friends and family, and everyone watching via webcast.

Ms. Lewis, thank you for being here. You had a nice introduction from Congresswoman Christensen.

[The biographical information follows.]

906

UNITED STATES SENATE COMMITTLE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

Michael Charles Green

2. Position: State the position for which you have been nominated.

United States District Judge for the Western District of New York

3. Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Monroe County District Attorney's Office 47 South Fitzhugh Street Rochester, New York 14614

Residence: Pittsford, New York

4. Birthplace: State year and place of birth.

1961; Rochester, New York

 Education: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1983 - 1986, Western New England College, School of Law; J.D., 1986

1979 - 1983, LeMoyne College; B.S., 1983

1982, State University of New York at Albany; No degree received

6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1987 – Present Monroe County District Attorney's Office 47 South Fitzhugh Street Rochester, New York 14614 District Attorney (2004 – Present) First Assistant District Attorney (2001 – 2003) Assistant District Attorney (1987 – 2001)

2008 – 2010 Rochester Institute of Technology One Lomb Memorial Drive Rochester, New York 14623 Adjunct Professor – Criminal Justice Department

1985 – 1987 Morris and Morris, Attorneys James E. Morris, Esq. 120 Corporate Woods Rochester, New York 14623 Associate Attorney (1987) Law Clerk (1985 – 1986)

1985 – 1986 Cooledge and Lauro, Attorneys 80 Maple Street Springfield, Massachusetts 01160 Law Clerk

Summer 1984 O'Connoll Electric Company 830 Phillips Road Victor, New York 14564 Laborer

Summer 1983 Self-employed Painter

Other Affiliations (Uncompensated)

2009 – Present Rise Up Rochester 244 South Plymouth Avenue Rochester, New York 14608 Board Member

908

2008 – Present Huther Doyle Memorial Institute (Chemical Dependency Treatment) 360 East Avenue Rochester, New York 14604 Board Member

2007 - Present New York Prosecutors Training Institute 107 Columbia Street Albany, New York 12210 Board Member

2006 – Present Boys and Girls Club of Rochester 500 Genesee Street Rochester, New York 14611 Board Member

2004 - Present National Center for Missing and Exploited Children - NY Branch 275 Lake Avenue Rochester, New York 14608 Board Member

2008 – 2010 American Cancer Society, Eastern Division, Lakes Region 1400 Winton Road North Rochester, New York 14609 Board Member

1997 – 2009 Family and Friends of Murdered Children No current address (merged with Rise Up Rochester) Board Member

1999 – 2002 The Daily Record (Legal Newspaper) 16 West Main Street Rochester, New York 14609 Advisory Board Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

I did not serve in the U.S. Military. I registered for the selective service upon turning 18.

- Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.
- 2009 Prosecutor of the Year, Executive Award New York Prosecutors Training Institute
- 2008 Youth Crime Watch of America Casey Award as the National Public Official of the Year
- 2008 Fight Crime Invest in Children "Champion for New York's Children" Award –
 presented at the New York State District Attorneys Association Annual meeting
- 2007 Carl S. Hallauer Award Rochester Police Department Rosewood Club for "extraordinary contributions to the criminal justice system and the youth of our community"
- 2007 Chairman's Award from the Boys and Girls Club of Rochester
- 2007 RIT Department of Criminal Justice Senior Class Award for Contributions to Instice
- 2005 Toastmasters International Communication and Leadership Award
- 2004 Greece Democratic Committee Person of the Year
- 2003 Certificate of Recognition Monroe County/City of Rochester Coalition for Crime Victims
- 2003 Certificate of Recognition Monroe County Public Safety Crime Laboratory
- 2000 Audrey Smith Award for advancing the cause of victims, their families and friends
- Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Monroe County Bar Association

Criminal Justice Section - Chairman (1996 - 1997)

Judiciary Committee (1998 – 2000); Non-voting member (2004 – Present)

District Attorneys Association of the State of New York (2000 - Present)

Member, Executive Committee (2004 - Present)

Vice President (2007 – present)

President-elect (2010)

Association of Government Attorneys in Capital Litigation (1997 – 2001)

Regional Vice President (1998 - 2000)

10. Bar and Court Admission:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York, 1987

There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

New York state courts, 1987 Supreme Court of the United States, 2004

There has been no lapse in membership.

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications

American Cancer Society, Eastern Division, Lakes Region Board Member (2008 – 2010)

Ancient Order of Hibernians, Monroe County, New York (2004 - 2005)

Boys and Girls Club of Rochester

Board Member (2006 – Present)

Family and Friends of Murdered Children

Board Member (1997 - 2009)

Fight Crime: Invest in Kids New York (2004 - Present)

Greater Rochester YMCA (1987 - Present)

Huther Doyle Memorial Institute (Chemical Dependency Treatment)

Board Member (2008 - Present)

Monroe County Crime Lab Advisory Team (2004 - 2005)

National Center for Missing and Exploited Children - NY Branch

Board Member (2004 - Present)

National College of District Attorneys, instructor (1999, 2001)

New York Prosecutors Training Institute

Board Member (2007 - Present)

New York State Commission on Sentencing Reform (2007 – 2009)

New York State Juvenile Justice Task Force (2008 – 2009)
Rise Up Rochester
Board Member (2009 – Present)
Rochester City Court Judge Selection Committee (2006)
Rochester Police Department's Community Volunteer Response Team,
Liaison (2000 – 2002)
Rochester Rotary (2004 – present)
The Daily Record (Legal Newspaper)
Advisory Board (1999 – 2002)
Wind Industry Ethics Advisory Task Force (2009 – 2010)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge none of the above organizations discriminates or formerly discriminated on the basis of race, sex, religion or national origin, with the exception of the Ancient Order of the Hibernians, who limit their membership to "men 16 years and older who are practicing Roman Catholics of Irish birth or descent and who are citizens of United States of America or who have declared their intentions to become citizens of the United States of America." With respect to the Hibernians, I have been told their records show I paid dues for two years (2004 and 2005). I was unaware of the group's membership restrictions at the time. To the best of my recollection, I attended only one meeting and thereafter ended my membership by not paying dues. I did not take any action to change their policies or practices.

12. Published Writings and Public Statements:

 a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

This list represents the published material I have identified through searches of my memory, my files, local newspaper archives, and internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to recall or identify.

Introduction to Winning Trial Strategies in the Empire State, New York Prosecutors Training Institute, July 2009. Copy supplied.

Cooperation Fuels Operation IMPACT Success, Rochester Democrat and Chronicle Guest Essay, Jan. 3, 2009. Copy supplied.

My Partnership with the Boys and Girls Club: Using Forfeiture Money to Benefit Kids, Empire State Prosecutor, Vol. 6, No. 1, at 5, published by the New York State Prosecutors Training Institute, Fall 2008. Copy supplied.

DA's Office Bears Big Load, Too, Rochester Democrat and Chronicle Guest Essay, Mar. 31, 2008. Copy supplied.

Project Exile, 13WHAM.com (ABC News), Apr. 30, 2008. Copy supplied.

Witnesses Get Protection, Rochester Democrat and Chronicle Guest Essay, Jan. 13, 2008. Copy supplied.

Vying for Top Spots in Government, Law, Candidate Questions for District Attorney, Rochester Democrat and Chronicle, Oct. 28, 2007. Copy supplied.

Responses to Questions published in First Bible Baptist Church Candidates Night Book, Oct. 28, 2007. Copy supplied.

Open Door Wider to DNA Use to Track Criminals, Cut Crime, Rochester Democrat and Chronicle Guest Essay, May 29, 2007. Copy supplied.

Protect Children from Grips of Repeat Sex Offenders on Loose, Rochester Democrat and Chronicle Guest Essay, Dec 17, 2006. Copy supplied.

All Should Do Their Part to Fight Violence in Rochester, Rochester Democrat and Chronicle Guest Essay, July 18, 2006. Copy supplied.

Is Curfew Remedy for Teen Crime?, Rochester Democrat and Chronicle Guest Essay, May 28, 2006. Copy supplied.

Untie Criminal Justice System's Hands in Use of DNA Evidence, Rochester Democrat and Chronicle Guest Essay, Jan. 13, 2006. Copy supplied.

Fight Crime: Redefine 'Early Education', Empire State Prosecutor, published by the New York State Prosecutors Training Institute, Fall 2005. Copy supplied.

Gun Felons are Swept from Street Block to Cellblock, Rochester Democrat and Chronicle Guest Essay, July 19, 2005. Copy supplied.

Response to questions regarding racism, Editorial Page of the Rochester Democrat and Chronicle, Jan. 14, 2005. Copy supplied.

Drug Law Reform Misses Mark: All-Purpose Anti-Drug Strategy, Rochester Democrat and Chronicle Guest Essay, Dec. 19, 2004. Copy supplied.

Cheers Sped District Attorney in N.Y.C. Marathon, Rochester Democrat and Chronicle Guest Essay, Nov. 24, 2004. Copy supplied.

Our Safety: Community Effort to Cut Crime, July 15, 2004, Rochester Democrat and Chronicle Guest Essay. Copy supplied.

Our Safety: Community Crime-Fighting, Rochester Democrat and Chronicle Guest Essay, Mar. 8, 2004. Copy supplied.

Fighting for Rochester's Future: Campaign 2003 Race for District Attorney, Rochester Democrat and Chronicle Guest Essay, Oct. 13, 2003. Copy supplied.

Responses to Questions published in First Bible Baptist Church Candidates Night Book, Oct. 2003. Copy supplied.

Safety and Security, Rochester Democrat and Chronicle Guest Essay, Apr. 11, 2003. Copy supplied.

Responses to Questions published in the Daily Record Newspaper for the 2003 District Attorney Campaign. Copy supplied.

Responses to Questions from the Rochester Democrat and Chronicle for the 2003 District Attorney Campaign. Copy supplied.

Monroe County DA's Office Handles Huge Caseload, Rochester Daily Record, May 1, 2002. Copy supplied.

Help Local Crime Victims by Serving on Juries and Joining Crime Watches, Rochester Democrat and Chronicle Guest Essay, Apr. 23, 2002. Copy supplied.

Anguish Persists after Case is Closed, Rochester Democrat and Chronicle Guest Essay, Apr. 11, 2000. Copy supplied.

Monroe County District Attorncy's Office 2007 Annual Report. Copy supplied.

Monroe County District Attorney's Office 2006 Annual Report. Copy supplied.

Monroe County District Attorney's Office 2005 Annual Report. Copy supplied.

Monroe County District Attorney's Office 2004 Annual Report. Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association,

committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

This list represents the reports, memorandum or policy statements I have identified through searches of my memory, my files, and internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to recall or identify.

I was appointed to and served as a member of the New York State Task Force on Transforming Juvenile Justice created by Governor Paterson. As a member of the Task Force, I contributed to the Final Report (Charting a New Course, A Blueprint for Transforming Juvenile Justice in New York State, December 2009) of the Task Force. A copy of the report is supplied.

I was appointed to and served as a member of the New York State Commission on Sentencing Reform created by Governor Spitzer. As a member of the Commission, I contributed to the Preliminary Report (A Preliminary Proposal for Reform, October 15, 2007) and Final Report (The Future of Sentencing in New York State: Recommendations for Reform, January 30, 2009) issued by the New York State Commission on Sentencing Reform. Copies of the reports are supplied.

From May 10-12, 2004, I attended a New York State Summit on Elder Abuse and was part of the Prosecution and Law Enforcement Work Group, which generated recommendations for a Final Report issued in January 2005 by the summit sponsor, Lifespan of Greater Rochester, Inc. A copy of the report is supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

This list represents the testimony, official statements or other communications I have identified through searches of my memory, my files, and internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to recall or identify.

On October 25, 2005, I testified before the New York State Commission of Investigation at a hearing about gang activity. I have no notes, transcript or recording. Press coverage of my remarks is supplied.

On September 20, 2005, I testified before the New York State Commission of Investigation at a hearing regarding DNA evidence. A copy of the materials from which I testified is supplied.

On April 7, 2005, I testified in Rochester, New York, before a New York State Assembly Republican Task Force on Urban Crime. A copy of the materials from which I testified is supplied.

On January 25, 2005, I testified at a hearing held in Albany, New York, by the New York State Assembly Standing Committees on Codes, Judiciary and Corrections regarding the death penalty. A copy of the materials from which I testified is supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Over the last twenty-three years I have given hundreds if not thousands of talks that would appear to fit within the above question. In addition to continuing legal education lectures, the overwhelming majority of these talks were to community groups regarding the Monroe County District Attorney's Office. I have given many of the talks without prepared notes. I do on occasion use notes or PowerPoint presentations. Some of the notes and presentations have not been saved, but where they are available I have supplied copies. While I have searched my records, memory and internet databases for speaking engagements it is possible that I have given other talks I have been unable to recall or identify.

New York Prosecutors Training Institute CLE Programs – Lecturer/Presenter Below is a list of events that I have been able to identify and recall. I have supplied materials where available. The address of NYPTI is 107 Columbia Street, Albany, New York 12210.

- July 29, 2010: Distributing Seized Assets, Project Step Up. PowerPoint supplied.
- January 29, 2010: Prosecutors Working With Communities, Best Practices Panel Presentation at District Attorneys Association of the State of New York Annual Winter Meeting. I have no notes, transcript or recording.
- August 5-7, 2002: Survey of Capital Punishment, "Mechanics of Capital Jury Selection." Outline supplied.
- April 2002: Introduction to DNA Evidence, "Effective Cross-Examination of a DNA Expert." Outline supplied.
- February 2002: Terrorism and Emerging Legal Issues in Murder Prosecutions, "Handling a Death Penalty Case." Outline supplied.

- August 2001: Capital Prosecution Survey Course, "A View from the Box." I have no notes, transcript or recording.
- August 1999: Capital Prosecutions Demonstrations and Discussions, lecture and demonstration entitled, "Arguing for Death." Outline supplied
- January 1998: Panelist, Statewide Conference on Capital Prosecution, Emerging Legal Issues. I have no notes, transcript or recording.

Monroe County District Attorney's Office CLE Presentations

- April 10, 2010: Opening Statements. Outline supplied.
- November 14, 2009: The Art of Cross Examination. PowerPoint supplied.
- April 8, 2006: Lawyering Skills, Preparing and Presenting Your Case.
 Outline supplied.
- February 2006: Sufficiency of Felony Accusatory Instruments. Outline supplied.
- November 13, 2004: Ceasefire and Related Violence Reduction Efforts.
 Outline supplied.
- March 27, 2004: Preparing for a Hearing. I have no notes, transcript or recording.
- March 23, 2002: Charging Decisions. Outline supplied.
- November 3, 2001: Probable Cause, Concerns, Issues and Related Cases.
 Outline supplied.
- March 31, 2001: Presentation of DNA Testimony and Related Legal Issues. Outline supplied.

Other CLE Presentations

- October 19, 2007: Panelist, "School Violence: Practical and Legal Consideration," Monroe County Bar Association. Written materials and video supplied.
- November 28, 2005: Panelist, Post-Sentence Civil Commitments for Sex Offenders, Greater Rochester Association for Women Attorneys, Hall of Justice in Rochester, New York. I have no notes, transcript or recording. GRAWA and press coverage of the event is supplied. The address of GRAWA is 279 Castlebar Road, Rochester, New York 14610.
- November 18, 2004: Panelist, "Stalking: Preventing a Workplace Disaster," Monroe County Bar Association and Greater Rochester Association for Women Attorneys. I have no notes, transcript or recording. GRAWA and press coverage is supplied.

Speeches, Panel Discussions, and other Public Appearances

 July 28, 2010: Panelist, Communities and Justice Partnerships & Challenges for the 21st Century, New York County District Attorney's

- Office and John Jay College of Criminal Justice, served on two panels entitled, "New Perspectives on Prosecution" and "Community Prosecution." Notes for "New Perspectives" panel supplied. I have no notes, transcript or recording for the "Community Prosecution" panel.
- July 15, 2010: Rise Up Rochester, ceremony to honor Audrey Smith.
 Press coverage supplied. The address of the organization is 244 South
 Plymouth Avenue, Rochester, New York 14604.
- July 14, 2010: ACT Rochester Panel Discussion on Youth Violence. I
 have no notes, transcript or recording. The address of ACT Rochester is
 500 East Avenue, Rochester, New York 14607.
- June 10, 2010: Boys and Girls Club of Rochester Accelerated Reader Program Awards Ceremony, spoke on importance of reading. I have no notes, transcript or recording. The address of the Club is 500 Genesee Street, Rochester, New York 14611.
- June 9, 2010: Panelist, 22nd Annual Preventative Coalition Conference, Stop the Violence and Rebuild our Community, Monroe County Preventive Service Coalition and Nazareth College Department of Social Work. I have no notes, transcript of recording. The address of the Coalition is Monroe County Department of Human Services, 691 St. Paul Street, Rochester, New York 14605.
- May 20, 2010: Speaker at roast for local radio personalities Bob Lonsberry and Brother Wease, Burgundy Basin Inn, Rochester, New York. I have no notes, transcript or recording.
- May 4, 2010: Monroe County Sheriff's Department Promotional Ceremony, Monroe Community College, spoke on importance of integrity and cooperation between agencies. I have no notes, transcript or recording. The address of the Sheriff's Department is Public Safety Building, 130 South Plymouth Avenue, Rochester, New York 14614.
- April 15, 2010: Monroe County Sheriff's Office Senior Citizens
 Academy, Hall of Justice, Rochester, New York, spoke on DA's Office. I
 have no notes, transcript or recording. The address of the Sheriff's
 Department is Public Safety Building, 130 South Plymouth Avenue,
 Rochester, New York 14614.
- April 8, 2010: IMPACT/Ceasefire call in, Hall of Justice, Rochester, New York, spoke to at risk youth regarding consequences of their behavior. I have no notes, transcript or recording. Operation IMPACT/Ceasefire is an initiative of the New York State Division of Criminal Justice Services whose address is 4 Tower Place, Albany, New York 12203.
- April 6, 2010: East Ridge High School, Irondequoit, NY, Participation in Government class, spoke regarding the role of the DA. I have no notes, transcript or recording. The address of the school is 2350 East Ridge Road, Rochester, New York 14622.
- March 31, 2010: Panelist, "Parents Who Host Lose the Most," Drug Free Action Alliance, spoke on potential criminal consequences for serving or allowing minors to consume alcohol, Irondequoit Town Hall. I have no notes, transcript or recording.

- March 31, 2010: McQuaid Jesuit High School, Brighton, New York, spoke on the role of the DA. 1 have no notes, transcript or recording. The address of the school is 1800 Clinton Avenue South, Rochester, New York 14620.
- March 30, 2010: Pittsford Alliance for Substance-Free Youth, Town Hall Meeting, Pittsford Sutherland High School, spoke on consequences relating to consumption of alcohol by minors. I have no notes, transcript or recording. The Alliance does not have a physical address.
- March 25, 2010: Panelist, Rochester Neighborhood 14621 public meeting, discussed local crime and safety issues. I have no notes, transcript or recording. The address for the Community Association for the neighborhood is 1171 North Clinton Avenue, Rochester, New York 14621.
- March 24, 2010: Panelist, HEART Coalition, "Numbers Speak the Truth, Real Stories About Youth," spoke of importance of positive role models for youth and examples of positive youth behavior, St. Mary's Church, Rochester, New York. I have no notes, transcript or recording. The address of the Coalition is 400 Dewey Avenue, Rochester, New York 14613.
- March 19, 2010: Panelist, Greater Rochester Association for Women Attorneys, discussion of Rochester author Amy Bach's book, Ordinary Injustice: How America Holds Court. I have no notes, transcript or recording. The address of GRAWA is 279 Castlebar Road, Rochester, New York 14610.
- March 10, 2010: Pediatric Grand Rounds and Community Forum, University of Rochester Medical Center, spoke on the importance of quality after school programs for children. I have no notes, transcript or recording. The address of the medical center is 601 Elmwood Avenue, Rochester, New York 14642.
- March 9, 2010: Rochester Rotary Club, Lunch Speaker with Mary Whittier, spoke on Child Abuse and the Bivona Child Advocacy Center. I have no notes, transcript or recording. The address of the Rotary Club is 180 Linden Oaks, Suite 200, Rochester, New York 14625.
- March 8, 2010: Irondequoit High School Personal Law Class, Irondequoit, NY, spoke on role of the DA and constitutional rights. I have no notes, transcript or recording. The address of the high school is 260 Cooper Road, Rochester, New York 14617.
- March 8, 2010: Monroe Community College, Criminal Justice Club, Damon Campus, spoke on the role of the DA and my career. I have no notes, transcript or recording. The address of the College is 1000 East Henrietta Road, Rochester, New York 14623.
- March 6, 2010: Keynote speaker, Webster Police Benevolent Association Community, Citizens, Police Awards Dinner, spoke on the importance of law enforcement and community relations. I have no notes, transcript or recording. The address of the Webster Police Department is 1000 Ridge Road, Webster, New York 14580.

- January 15, 2010: Western New York Crime Victims Coalition, Criminal Justice Training Center, spoke on legal updates regarding victims' issues.
 I have no notes, transcript or recording. The address of the Coalition is 222 West Main Street, Batavia, New York 14020.
- January 14, 2010: Rochester Teachers Association, "A Conversation with People in Charge," spoke on crime trends and crime involving the school district. I have no notes, transcript or recording. The address of the RTA is 30 North Union Street, Suite 301, Rochester, New York 14607.
- January 11, 2010: Rochester City School District Youth and Justice Program, Monroe County Probation Department, spoke on crime trends and positive opportunities for youth. I have no notes, transcript or recording. The address of the Program is 107 North Clinton Avenue, Rochester, New York 14604.
- January 6, 2010: Pittsford Rotary, Addressing Crime in Rochester. PowerPoint supplied.
- December 1, 2009: Rush Henrietta Rotary Club, Crime in Rochester and the DA's Office. I have no notes, transcript or recording. The address of the club is P.O. Box 22838, Rochester, New York 14692.
- November 17, 2009: Law Enforcement Agency Award Ceremony, Mothers Against Drunk Driving, acceptance remarks on behalf of the District Attorney's Office. I have no notes, transcript or recording. The address of MADD is 2125 Buffalo Road, #115, Rochester, New York 14624
- October 27, 2009: Community Forum, National Center for Missing and Exploited Children and the NY Attorney General's Office, opening Remarks on keeping children safe. I have no notes, transcript or recording. The address of the NCMEC is Charles B. Wang International Children's Building, 699 Prince Street, Alexandria, Virginia 22314.
- October 15, 2009: Monroe County Sheriff's Office Senior Citizens
 Academy, Hall of Justice, Rochester, New York, spoke on DA's Office. I
 have no notes, transcript or recording. The address of the Sheriff's
 Department is Public Safety Building, 130 South Plymouth Avenue,
 Rochester, New York 14614.
- October 13, 2009: groundbreaking ceremony for new Monroe County Public Safety Laboratory. I have no notes, transcript or recording. The address of the Laboratory is 150 South Plymouth Avenue, Room 500, Rochester, New York 14614.
- September 29, 2009: Project Exile 11th Annual Report to the Community, remarks regarding the DA's office role in and update regarding Project Exile, Rochester, New York. I have no notes, transcript or recording, but press coverage on the event is supplied. Project Exile is an initiative run through the U.S. Attorney's Office whose address is 620 Federal Building, 100 State Street, Rochester New York 14614.
- September 17, 2009: Monroe County Sheriff's Office Awards Lunch, spoke on cooperation between offices. I have no notes, transcript or

- recording. The address of the Sheriff's Department is Public Safety Building, 130 South Plymouth Avenue, Rochester, New York 14614.
- September 9, 2009: IMPACT/Ceasefire call-in, Hall of Justice, Rochester, New York, spoke to at risk youth regarding consequences of their behavior. I have no notes, transcript or recording. Operation IMPACT/Ceasefire is an initiative of the New York State Division of Criminal Justice Services whose address is 4 Tower Place, Albany, New York 12203.
- September 8, 2009: Rochester Rotary guest speaker, Riverside Convention Center. Notes supplied.
- August 7, 2009: University of Rochester Medical Center, "Advocacy in Action," spoke to new doctors regarding crime and children's issues. I have no notes, transcript or recording. The address of the medical center is 601 Elmwood Avenue, Rochester, New York 14642.
- July 21, 2009: Jewish Community Center, Men in Transition group, Current events in the DA's Office. I have no notes, transcript or recording. The address of the center is 1200 Edgewood Avenue, Rochester, New York 14618.
- June 19, 2009: Greater Rochester After School Alliance and City of Rochester Legislative Breakfast, spoke on relationship between crime and issues effecting children and on particularly effective after school programs. I have no notes, transcript or recording. GRASA is an initiative of the Rochester Area Community Foundation whose address is 500 East Avenue, Rochester, New York 14607.
- June 11, 2009: Monroe County Probation Officers Association Meeting, keynote speaker, spoke on legislative changes including drug law reform, and the importance of interagency cooperation. I have no notes, transcript or recording. The address of the MCPOA is 33 North Fitzhugh Street, Rochester, New York 14614.
- June 3, 2009: Hilton Middle School career day, spoke on DA's office and my career. I have no notes, transcript or recording. The address of the school is 100 School Lane, Hilton, New York 14468.
- May 28, 2009: Rochester City School District, School of the Arts, SADD day, spoke on drunk driving and the effects on students. I have no notes, transcript or recording. The address of the district is 131 West Broad Street, Rochester, New York 14614.
- April 29, 2009: Genesee County Law Day Dinner, Genesee County Bar Association, spoke on the Law Day theme. I have no notes, transcript or recording. The address of the Bar Association is c/o Durin Rogers, President (Assistant County Attorney – Department of Social Services), 5130 East Main Street Road, Batavia, New York 14020.
- April 8, 2009: Irondequoit Citizens Police Academy, spoke on the DA's
 office. I believe I spoke each year since 2004, but I do not know the dates
 of those talks. I have no notes, transcript or recording. The address of the
 Irondequoit Police Department is 1300 Titus Avenue, Rochester, New
 York 14617.

- March 31, 2009: Rochester City School District, Monroe High School
 Law and Government Classes, spoke on DA's office, the court system, the
 Constitution, and careers. I have no notes, transcript or recording. The
 address of the district is 131 West Broad Street, Rochester, New York
 14614
- March 27, 2009: Monroe County Bar Association, Law over Lunch, spoke on media and the criminal justice system. I have no notes, transcript or recording. The address of MCBA is One West Main Street, 10th Floor, Rochester, New York 14614.
- March 26, 2009: McQuaid Jcsuit High School, Brighton, NY, spoke on the role of the DA. I have no notes, transcript or recording. The address of the school is 1800 Clinton Avenue South, Rochester, New York 14620.
- March 18, 2009: Press conference, Fight Crime: Invest in Kids New York, remarks on the need for increased early childhood education funding. I have no notes, transcript or recording. The address of Fight Crime is 3 Columbia Place, Floor 2, Albany, New York 12207.
- March 6, 2009: Finger Lakes Consortium of Alcohol and Substance Abuse Services Annual Spring Legislative Breakfast, keynote speaker, spoke on drug law reform and drug treatment through the criminal justice system. I have no notes, transcript or recording. The Consortium does not have a physical address.
- February 27, 2009: Rochester/Monroe County Domestic Violence Consortium 10th Annual Legislative Breakfast, Introduction. I have no notes, transcript or recording. The address of the Consortium is 244 South Plymouth Avenue, Rochester, New York 14608.
- January 9, 2010: Gates Supervisor Ralph Esposito retirement party. I have no notes, transcript or recording.
- November 18, 2008: Irondequoit community forum on the state's
 Community Partnership Initiative, Irondequoit High School. I spoke with
 then-Attorney General Cuomo about cooperation between my office and
 the Attorney General's office. I have no notes, transcript or recording.
 The address of the high school is 260 Cooper Road, Rochester, New York
 14617.
- October 23, 2008: community meeting, HEART Coalition, report on antidrug efforts. I have no notes, transcript or recording. The address of the Coalition is 400 Dewey Avenue, Rochester, New York 14613.
- September 18, 2008: United States Attorney's Office for the Western
 District of New York Gang Conference, closing remarks. I have no notes,
 transcript or recording. The address of the U.S. Attorney's Office is 138
 Delaware Avenue, Buffalo, New York 14202.
- September 3, 2008: news conference with Fight Crime: Invest in Kids New York to announce report on the effect of graduation rates on crime. 1 have no notes, transcript or recording. The address of Fight Crime is 3 Columbia Place, Floor 2, Albany, New York 12207.
- April 8, 2008: SUNY Brockport Criminal Justice Class, Addressing Crime in Rochester. PowerPoint supplied.

- April 2, 2008: Panelist, "Parents Who Host Lose the Most" Irondequoit Committee, Drug Free Action Alliance, discussion about underage drinking and parents who host drinking parties for minors. I have no notes, transcript or recording.
- March 18, 2008: Rochester Public Library, "Books Sandwiched-In," book review talk on *The Nine: Inside the Secret World of the Supreme Court*, by Jeffrey Toobin. I have no notes, transcript or recording. The address of the Rochester Public Library is 115 South Avenue, Rochester, New York 14604
- February 15, 2008: Northwest AARP Monthly Meeting, remarks on work
 of and challenges facing the District Attorney's office. I have no notes,
 transcript or recording. Press coverage supplied.
- December 31, 2007: Speech at my swearing-in as District Attorney, Rochester, New York. I have no notes, transcript or recording but press coverage is supplied. The address of the District Attorney's Office is 47 South Fitzhugh Street, Rochester, New York 14614.
- October 31, 2007: District Attorney candidate radio debate on 1180 WHAM. Press coverage and video story available at http://fingerlakes.ynn.com/content/354963/monroe-da-debate-gets-nasty/. The address of 1180 WHAM is 1700 HSBC Plaza, 100 Chestnut Street, Rochester, New York 14604.
- October 30, 2007: Irondequoit Town Hall vigil for victims of domestic violence. Video clip and press coverage available at http://www.mpnnow.com/towns/irondequoit/x481172438. The address of the Town Hall is 1280 Titus Avenue, Rochester, New York 14617.
- October 28, 2007: Candidates Night, First Bible Baptist Church, Greece, New York. Notes supplied and questions I answered for the Candidates Night Book were supplied in response to 12(a).
- October 23, 2007: Meet the Candidates Night, Community Place, St. Mark's & St. John's Episcopal Church, Rochester, New York. I have no notes, transcript or recording.
- October 9, 2007: Downtown Rochester Rotary District Attorney Candidates Debate. Copies of my opening and closing statements are supplied and press coverage of my debate remarks is also supplied.
- October 3, 2007: campaign spot on public television. Script supplied.
- September 28, 2007: 9th Anniversary of Project Exile event, Holiday Inn, Gate, New York. I spoke on the MCDA's role in Project Exile and the cooperation between agencies. I have no notes, transcript or recording. Press coverage supplied. Project Exile is an initiative run through the U.S. Attorney's Office whose address is 620 Federal Building, 100 State Street, Rochester New York 14614.
- August 16, 2007: Fight Crime: Invest in Kids New York event at Caring & Sharing Child Care Center, remarks about the importance of prekindergarten education as crime preventative. I have no notes, transcript or recording. Press release supplied. The address of Fight Crime is 3 Columbia Place, Floor 2, Albany, New York 12207.

- July 31, 2007: Address to Executive Committee of the Rochester Business Alliance. PowerPoint supplied
- May 24, 2007: Commencement speaker, Bryant & Stratton College graduation ceremony. I have no notes, transcript or recording. The address of the college is 150 Bellwood Drive, Rochester, New York 14606.
- May 17, 2007: Monroe County Democratic Committee Nominating Convention. Notes supplied.
- November 2, 2006: Keynote speaker, League of Women Voters huncheon, Hyatt Regency, Rochester, New York. I have no notes, transcript or recording. The address of the League of Women Voters is 45 Exchange Boulevard, Suite 508, Rochester, New York 14614.
- October 25, 2006: East Rochester community forum, remarks on community and crime prevention. I have no notes, transcript or recording. Press coverage supplied.
- June 28, 2006: Youth Voice, One Vision Council meeting, public Q&A session on a proposed youth curfew in Rochester. I have no notes, transcript or recording. The address of the Council is 400 Dewey Avenue, Rochester New York, 14613.
- June 24, 2006: Commencement address to Edison Tech School of Engineering and Manufacturing. Notes supplied.
- May 3, 2006: Panelist, "Parents Who Host, Lose the Most," Drug Free Action Alliance, discussion of serving alcohol to minors. I have no notes, transcript or recording.
- May 2006: National Council on Alcoholism and Drug Dependence annual luncheon, discussed NCADD's work with Rochester and Monroe County.
 I have no notes, transcript or recording.
- March 29, 2006: Speech to Henrietta Chamber of Commerce. Notes supplied.
- March 15, 2006: Panelist, Bryant & Stratton, careers in criminal justice. I
 have no notes, transcript or recording. The address of the college is 150
 Bellwood Drive, Rochester, New York 14606.
- March 7, 2006: judge, Sydney Rubin Mock Trial, Rochester, New York. I have no notes, transcript or recording.
- 2006: Monroe Community College Anti Violence Forum. Notes supplied
- December 14, 2005: Probation Conference, New York, New York. Notes supplied
- December 13, 2005: Rochester Rotary guest speaker, Oak Hill Country Club. I have no notes, transcript or recording. The address of the organization is 100 Meridian Centre Boulevard, #304, Rochester, New York 14618.
- September 28, 2005: Speaker at Hamlin Town Hall, police protection and crime issues. I have no notes, transcript or recording. This event was sponsored by the Town of Hamlin Democratic Committee, which is affiliated with the Monroe County Democratic Committee. The address of

- the MCDC is 1150 University Avenue, Building 5, Rochester, New York 14607.
- May 30, 2005: Keynote speech, Pittsford Memorial Day Parade, Pittsford, New York. I have no notes, transcript or recording.
- April 27, 2005: Speakers forum, Monroe County Bar Center for Education, discussed effects of changes to D.A. Office's plea bargaining policy. I have no notes, transcript or recording. The bar association's address is I West Main Street, 10th Floor, Rochester, New York 14614.
- February 15, 2006: guest speaker, Southeast Monroe Chapter 3307 AARP meeting. I spoke generally about the District Attorney's Office and on elder abuse. I have no notes, transcript or recording.
- January 18, 2005: Monroe County Bar Association's Lawyers for Learning program, School 29 Elementary, remarks to students on how to "stay out of the justice system," Rochester, New York. 1 have no notes, transcript or recording. The bar association's address is 1 West Main Street, 10th Floor, Rochester, New York 14614.
- 2005: Anti-Violence talk. I do not recall the exact date, location or sponsor. Notes supplied.
- October 7, 2004: Domestic Violence Conference, "Linking Systems, Saving Lives," Rochester/Monroe County Domestic Violence Consortium. I have no notes, transcript or recording. Press coverage supplied. The organization's address is 244 South Plymouth Avenue, Rochester, New York 14608.
- July 7, 2004: "Anatomy of a Trial" at "Revitalizing Law-Related and Civic Education" training program for New York teachers, Monroe County Bar Association. I have no notes, transcript or recording. Press coverage supplied. The bar association's address is : West Main Street, 10th Floor, Rochester, New York 14614.
- April 26, 2004: Monroe Community College seminar, discussed violence in Rochester area. I have no notes, transcript or recording. The address of the College is 1000 East Henrietta Road, Rochester, New York 14623.
- March 20, 2004: Workshop leader, North East Area Development, Inc. Faith-Based Conference, workings of the court system. I have no notes, transcript or recording.
- February 17, 2004: Rochester Rotary Speech. Notes supplied
- February 6, 2004: Rochester Drug Treatment Court Graduation Speech. Notes supplied.
- December 30, 2003: Speech at my swearing in as District Attorney, Rochester, New York. Notes supplied.
- October 23, 2003: District Attorney candidate debate, Voice of the Voter, aired on WXXI and WORK. I have no notes, transcript or recording.
 Press coverage supplied. Voice of the Voter is a partnership of Rochesterarea media and does not have a physical address.
- October 8, 2003: Candidate debate, Rnews (now YNN). Notes for opening statement and press coverage supplied.

- October 1, 2003: Meet the Candidates luncheon, Greater Rochester Association for Women Attorneys, remarks on qualifications to be District Attorney. Notes and press coverage supplied.
- October 2003: Campaign spot on public television. Script supplied.
- October 2003: Candidates Night, First Bible Baptist Church, Greece, New York. Questions I answered for the Candidates Night Book were supplied in response to 12(a).
- September 24, 2003: Panelist, discussion of upcoming elections and issues facing the community, Strong Auditorium, Rochester, New York. I have no notes, transcript or recording, and I do not recall who sponsored the panel.
- September 14, 2003: Candidate forum, Temple B'rith Kodesh, remarks on crime in Monroe County. I have no notes, transcript or recording. Press coverage supplied.
- August 9, 2003: Speaker at community meeting on Jefferson Avenue, discussed community involvement and unity. I have no notes, transcript or recording. Press coverage supplied.
- May 22, 2003: Jay Orchard Street Area Neighborhood Association forum, support for the group's anti-crime initiatives. I have no notes, transcript or recording. Press coverage supplied.
- January 12, 2003: Speech at seminar on merits and morality of capital
 punishment, Sponsored by State University at Brockport's criminal justice
 department and Temple B'rith Kodesh. I have no notes, transcript or
 recording. Press coverage supplied. The address of the school is 350
 New Campus Drive, Brockport, New York 14420.
- 2003: Campaign "stump speech," given on multiple occasions. Outline supplied.
- 2003: Speaker for Monroe County Democratic Party's Kennedy Council.
- November 1, 2002: Ceremony to honor Nancy Scibetta and Ellyn Colquhoun for roles as DNA technicians and expert witnesses. I have no notes, transcript or recording. Press coverage supplied.
- June 29, 2002: service in memory of victims of urban violence, Tyshaun Lamar Cauldwell Foundation. I have no notes, transcript or recording. Press coverage supplied.
- 2000 2002: Presenter on multiple occasions, "Trends at the DA's Office." Outline supplied.
- Mid-1990s: Speaker before International Association of Bomb Technicians and Investigators.
- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Over the last twenty-three years I have given well over a thousand interviews to various media outlets. While I have searched my records, newspaper archives,

my memory and internet databases for these interviews, it is possible that I have given others I have been unable to recall or identify. I am supplying articles and transcripts where I have been able to locate them. In addition, I am supplying copies of all audio and video recordings that are available to me, but there may be additional recordings that I have not been able to obtain. To the extent I am able to obtain any additional recordings, I will supply them to the Committee.

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News 8 at 11pm on WROC-CBS, Sept. 12, 2006. Transcript supplied.

Wake Up Rochester on WROC-CBS, Aug. 16, 2006. Transcript supplied (while not directly quoted, I was interviewed for the piece).

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Interviewed for a segment of Cold Case Files called "Innocence Stolen," A&E, aired July 8, 2006. I have been unable to obtain a copy of this recording.

	criminal proceedings: % [total 100%]						
	civil proceedings:%						
	jury trials:% bench trials:% [total 100%]						
i. Of these, approximately what percent were:							
Approximately how many cases have you presided over that have gone to verdict or judgment?							
	not held judicial office.						
positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.							
13. Judicial Office: State (chronologically) any judicial offices you have held, including							
News 10 Live at Five on WHEC-NBC, Nov. 16, 2005. Transcript supplied.							
News 8 Now at 6pm on WROC-CBS, Nov. 16, 2005. Transcript supplied.							
	News 8 Now at Noon on WROC-CBS, Nov. 17, 2005. Transcript supplied.						
	News 10 at Six on WHEC-NBC, Dec. 10, 2005. Transcript supplied.						
	News 10 at Six on WHEC-NBC, Dec. 20, 2005. Transcript supplied.						
	News 10 at Eleven on WHEC-NBC, Dec. 21, 2005. Transcript supplied.						
	News 8 Now at 5pm on WROC-CBS, Jan. 5, 2006. Transcript supplied.						
News 10 at Six on WHEC-NBC, Feb. 15, 2006. Transcript supplied.							
	News 10 at Six on WHEC-NBC, Mar. 3, 2006. Transcript supplied.						
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	News 8 Now at 6pm on WROC-CBS, June 21, 2006. Transcript supplied.						
	The Ten O'Clock News on WUHF-FOX, June 21, 2006. Transcript supplied.						

- Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
- 14. <u>Recusal</u>: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
 - a. whether your recusal was requested by a motion or other suggestion by a litigant
 or a party to the proceeding or by any other person or interested party; or if you
 recused yourself sua sponte;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;

- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Monroe County District Attorney. This is an elected position with a four year term. I served from January 1, 2004 through the end of 2007, and am currently serving my second term, which started January 1, 2008 and will conclude at the end of 2011.

I have never had an unsuccessful candidacy for elective office. I submitted an application for the position of Magistrate in the United States District Court, Western District of New York in or about 1995, but was not selected for the position.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was a campaign volunteer for New York State Assemblyman Gary Proud in his reelection campaign in 1982. My primary duty was collecting petition signatures.

16. Legal Career: Answer each part separately.

- Describe chronologically your law practice and legal experience after graduation from law school including:
 - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

 the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1986 – 1987 Morris and Morris, Attorneys James E. Morris, Esq. 120 Corporate Woods Rochester, New York 14623 Associate Attorney (1987) Law Clerk (1986)

1987 - Present
Monroe County District Attorney's Office
47 South Fitzhugh Street
Rochester, New York 14614
District Attorney (2004 - Present)
First Assistant District Attorney (2001 - 2003)
Assistant District Attorney (1987 - 2001)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

 the general character of your law practice and indicate by date when its character has changed over the years.

After graduating from law school in 1986, I worked for Morris and Morris, first as a law clerk and then as an associate attorney. I worked for attorney James E. Morris, Esq., who maintained a general practice, and my work focused on real estate closings and plaintiffs' personal injury work.

Since March 1987, I have worked in the Monroe County District Attorney's Office prosecuting criminal cases. I prosecuted misdemeanor and violation cases in local criminal courts from 1987 to 1989. From 1989 to 1991, I served as a trial attorney in the felony DWI, County Court, and Major Felony Bureaus prosecuting and trying felony cases. In 1992, I served as Chief of the DWI Bureau. In this role, I supervised attorneys prosecuting felony DWI cases and also personally prosecuted DWI-related

assault and homicide cases. From 1993 to 2000, I was the Deputy Chief of the Major Felony Bureau and the Capital Crimes Prosecutor. I assisted with the supervision of the attorneys in the Major Felony Bureau and personally prosecuted capital, homicide, and high-profile violent felony cases. From 2001 to 2003, I served as First Assistant District Attorney. I supervised the homicide prosecutions and, with the District Attorney, handled the administration of the office, which was comprised of approximately 79 attorneys and a total staff of approximately 135. I also personally prosecuted homicide and other high-profile violent felony cases. Since 2004, I have served as District Attorney of Monroe County. In addition to my duties running the office and managing our relationships with other organizations and the public, I continue to personally prosecute and try homicide and other high-profile violent felony cases.

 your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

For the last 23 years, my "client" has been the People of the State of New York. I have specialized in homicide and violent felony prosecutions.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I have tried approximately 110 felony trials in Monroe County Court and New York State Supreme Court over the last 21 years, including approximately 40 homicide cases. I have personally prosecuted thousands of cases during that time period. I have appeared in court frequently and on a very regular basis for arraignments, motion arguments, hearings, trials and sentencing proceedings. For the first five years of my career in the District Attorney's Office, my practice was exclusively litigation. As my career has progressed, I have taken on administrative responsibilities in addition to my litigation. I have continued to personally prosecute and try cases throughout my career, including the prosecution of twelve defendants in nine trials as District Attorney.

i. Indicate the percentage of your practice in:

1.	federal courts:	0 %
2.	state courts of record:	100 %
3.	other courts:	0 %
4.	administrative agencies:	0 %

- ii. Indicate the percentage of your practice in:
 - civil proceedings: less than 1%
 criminal proceedings: more than 99%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 108 felony cases to verdict in Monroe County Court or New York State Supreme Court. I have been sole counsel in 101 of these cases, lead counsel in six, and co-counsel in one. In addition, I have tried hundreds of cases to verdict in local criminal courts, including Rochester City Court.

i. What percentage of these trials were:

1. jury: 80% 2. non-jury: 20%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never practiced before the Supreme Court of the United States.

- 17. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
 - 1. People v. Mateo (Monroe County Court, Indictment #914, 1996)

Mateo was charged with first degree murder, attempted first degree murder, kidnapping and other crimes in relation to three separate but related incidents. He was charged with a second count of first degree murder for the commission of four murders in a similar fashion. The first degree murder charges were under a recently enacted capital murder statute. The trial judge dismissed one first degree murder charge on the grounds that the murders were not sufficiently similar. That decision was affirmed by the Appellate Division and the Court of Appeals (People v. Mateo, 249 AD2d 894 [4th Dept 1998]; affirmed 93 NY2d 327 [1999]). The trial court also declared a provision of the statute

dealing with pleas unconstitutional. The Appellate Division granted a declaratory injunction in favor of the District Attorney (Relin v. Connell, 251 AD2d 1041 [4th Dept, 1998]), the Court of Appeals reversed and affirmed the trial court's ruling (Hynes v. Tomei, 92 NY2d 613 [1998]), and the United States Supreme Court denied certiorari (Hynes v. Tomei, 527 U.S. 1015 [1999]).

The District Attorney sought the death penalty and the defendant was tried and convicted of first degree murder and other crimes. The defendant was sentenced to death. The convictions were affirmed on appeal, but the death sentence was set aside due to a ruling that a portion of the state statute was unconstitutional. The defendant was sentenced to life without parole (People v. Mateo, 2 NY3d 383 [2004]). The additional three murders were tried and the defendant was convicted of the murders. The convictions were affirmed, (People v. Mateo, 11 AD3d 984 [4th Dept, 2004], leave denied 3 NY3d 758).

I was the lead prosecutor, and co-counsel were Hon. Richard Keenan, retired Monroe County Court Judge (c/o Clerk Monroe County Court, 545 Hall of Justice, Rochester, New York, 14614, (585) 428-2020), Wendy Lehmann (retired, c/o Monroe County District Attorney's Office, 47 South Fitzhugh Street, Rochester, New York, 14614, (585) 753-4334), and Hon. Joanne Winslow (New York State Supreme Court Justice, 545 Hall of Justice, Rochester, New York, 14614, (585) 428-1892).

The defendant was represented by William Easton of the Capital Defender Office (16 West Main Street, Suite 243, Rochester, New York, 14614, (585) 423-8290).

Former Monroe County Court Judge John Connell (deceased) was the judge for all pretrial and trial matters.

2. People v. Szlekovics (Monroe County Court, Indictment #915, 1996)

Szlekovics, who was Mateo's wife, was indicted for first degree murder, kidnapping and related charges pertaining to three separate but related incidents. Szlekovics was tried before a jury, and convicted of second degree murder, kidnapping and other charges. She was sentenced to 25 years to life on the murder charge and consecutive sentences on the kidnapping and related charges. The conviction was affirmed on appeal (People v. Szlekovics, 19 AD3d 1036 [4th Dept, 2005]; leave denied 5 NY3d 810).

I was lead counsel and Kenneth Hyland, Esq. (31 North Main Street, Pittsford, New York, 14534, (585)-385-2510) and Wendy Lehmann (retired, c/o Monroe County District Attorney's Office, 47 South Fitzhugh Street, Rochester, New York, 14614, (585) 753-4334) were co-counsel.

Szlekovics was represented by Peter Pullano, Esq. (One East Main Street, Suite 711, Rochester, New York, 14614, (585) 546-1090).

Former Monroe County Court Judge John Connell (deceased) was the judge for all pretrial and trial matters. 3. People v. Laster - (Monroe County Court, Indictment #466, 2000 and Indictment #622, 2005)

Laster, referred to as the "school girl rapist," raped three young women on their way to school in 1995 and a fourth in 1997. I was assigned to work with a police task force investigating the rapes in 1995. DNA testing linked all four rapes to a single perpetrator. In 2000, to prevent the statute of limitations from running, the three 1995 rapes were presented to a Grand Jury and a "John Doe" indictment was filed, charging the individual with the DNA profile from the rapes, whose name was at the time unknown, with the rapes. This was the first time this strategy had been used in Monroe County, and one of the first times it had been used in the state. In 2005, a national CODIS hit linked our DNA profile from the John Doe case to a rape arrest from Alabama. A Grand Jury returned a separate indictment on the 1997 rape. The indictments were consolidated for trial and the defendant was convicted of all charges. His convictions were affirmed on appeal (People v Laster, 78 AD3d 1481 [4th Dept, 2010], [appeal No. 1]; People v Laster, 78 AD3d 1481 [4th Dept, 2010], [appeal No. 2]).

I was lead and sole counsel for the District Attorney's Office throughout this litigation.

Laster was represented by Jill Paperno and Erik Teifke of the Monroe County Public Defender's Office (10 North Fitzhugh Street, Rochester, New York, 14614, (585) 753-4240 (Paperno) and (585) 753-4903 (Teifke)).

Retired Monroe County Court Judge Patricia Marks handled the pretrial and trial litigation on this case.

4. People v. Owens (New York State Supreme Court, Monroe County, Indictment #414 and #547, 1999)

John Owens, a five-time felon, was charged with two counts of murder in the first degree and additional crimes for two rape-murders, and two counts of rape in the first degree and additional crimes for two additional rapes. The District Attorney sought the death penalty, and the two first degree murders and one of the rapes were tried before a jury. The defendant was convicted of all three charges after a trial that spanned nine months. The jury deadlocked on whether to sentence the defendant to death or life without parole on one count, and on the other count, they decided on a sentence of life without parole. The defendant was sentenced to life without parole, 25 years to life on the second (deadlocked) murder, and 25 years on the rape. This conviction was affirmed on appeal (People v. Owens, 51 AD3d 1369 [4th Dept 2008]; leave denied 11 NY3d 740). At a separate trial, the defendant was convicted of the remaining rape and sentenced to an additional 25 years. This conviction was affirmed on appeal (People v Owens, 50 AD3d 1579 [4th Dept 2008]; leave denied 10 NY3d 938).

I was lead counsel for all of the Owens litigation. In the capital trial, co-counsel was David Foster, Esq. (Appellate Division, 4th Dept., 50 East Avenue, Rochester, New York, 14604, (585) 530-3100).

Owens was represented by Michael Murray, Esq. (now deceased), Peter Pullano, Esq., (Onc East Main Street, Suite 711, Rochester, New York, 14614, (585) 546-1090) and William Easton of the Capital Defender Office (16 West Main Street, Suite 243, Rochester, New York, 14614, (585) 423-8290).

New York State Supreme Court Justice David Egan presided at the capital trial. New York State Supreme Court Justice Elma Bellini presided at the rape trial.

5. People v. Rouse, et al. - (Monroe County Court, Indictment #235, 2006)

Defendants were arrested in April of 2006 and charged with the attempted robbery and murder of a young minister in Rochester. In three separate jury trials, all defendants were convicted of murder. Two were convicted of murder in the second degree (<u>People v Rouse</u>, 74 AD3d 1817 [4th Dept, 2010]; leave denied 15 NY2d 895). The third, who fired the fatal shot, was convicted of murder in the first degree and sentenced to life without parole. His conviction was affirmed but the sentence was modified to 25 years to life (<u>People v Owens</u>, 78 AD3d 1509 [4th Dept, 2010]).

I was lead and sole trial counsel during this case.

Rouse was represented by Daniel Mastrella (19 West Main Street, Suite, 600, Rochester, New York, 14614, (585) 232-8810).

Peters was represented by James E. Brown (45 East Main Street, 2nd Floor, Rochester, New York, 14614, (585) 423-0246).

Owens was represented by Diane Russell, at the time with the Monroe County Public Defender's Office (16 West Main Street, Suite 243, Rochester, New York, 14614, (585) 546-7070).

Monroe County Court Judge Frank Geraci presided over the pre-trial and trial litigation of all cases.

6. People v. Anderson, et al. (Monroe County Court, Indictment #1050, 2007)

The three defendants were charged with killing a store owner during a robbery. Defendant Anderson was also charged with an armed robbery of another store. Defendant Lewis was charged with an unrelated armed street robbery. Anderson was tried and convicted by a jury of murder and both robberies and sentenced to 50 years to life. Defendant Woods was tried by a jury and convicted of robbery and murder and sentenced to 25 years to life. Lewis pled guilty to murder as his trial was scheduled to

begin and was sentenced to 25 years to life.

I was lead counsel for this case. Co-counsel was Assistant District Attorney Perry Duckles (47 South Fitzhugh Street, Rochester, New York, 14614, (585) 753-4653).

Anderson was represented by James Vacca (One East Main Street, Rochester, New York 14614, (585) 423-0110).

Woods was represented by Mark Funk (144 Exchange Boulevard, Rochester, New York, 14614, (585) 325-4080).

Lewis was represented by Michael Schmitt (36 West Main Street, Suite 500, Rochester, New York, 14614, (585) 232-1770).

Monroe County Court Judge Frank Geraci presided over the pre-trial and trial litigation of all cases.

7. People v. Berger (New York State Supreme Court, Monroe County, Indictment #359, 1985)

Prior to my involvement with this case, defendant Berger was convicted of two murders and insurance fraud for murdering two people in separate incidents in furtherance of an insurance fraud scheme he was running. One of the murder convictions was reversed on appeal (Pcople v. Berger, 188 AD2d 1073 [1992]), and I was assigned to handle the retrial. Evidence from the original trial had been destroyed. After a five-week trial, the defendant was convicted of murder, with proof consisting largely of testimony from Berger's associates and circumstantial proof. He was sentenced to 25 years to life, consecutive to a life sentence he was serving. The conviction was affirmed on appeal (People v. Berger, 234 AD2d 980 [4th Dcpt 1996]; leave denied 89 NY2d 983).

I was lead and only counsel for the District Attorney from the time the case was reversed on appeal through the defendant's conviction and sentencing.

The defendant was represented by Robert Simels (Simels was convicted in Federal District Court, Southern District of New York, and I believe he is currently in federal prison).

New York State Supreme Court Justice Donald Wisner, who is now retired from his position on the Appellate Division, Fourth Department, presided over the above trial.

8. People v. Remelt (New York State Supreme Court, Monroe County, Indictment #367, 1994)

Remelt was charged with two counts of murder for shooting his parents multiple times with a shotgun as they lay in bed. He had a history of psychiatric issues. He was ruled incompetent to stand trial for a period of time, but was ultimately found to be competent.

The psychiatric defense was the only serious defense raised. After a lengthy trial that included extensive cross examination of several defense experts and the presentation of our experts, the defendant was convicted by a jury of two counts of murder. The convictions were affirmed on appeal (the sentence was modified) (People v. Remelt, 269AD2d 815 [4th Dept, 2000]; leave denied 95 NY2d 870).

I was co-counsel handling all psychiatric issues. Retired Judge Richard Keenan (c/o Clerk Monroe County Court, 545 Hall of Justice, Rochester, New York, 14614, (585) 428-2020) was the lead prosecutor.

The defendant was represented by Thomas Kidera, Monroe County Public Defender's Office (Ontario County Public Defender, 20 Ontario Street, Canandaigua, New York, 14424, (585) 396-4645).

New York State Supreme Court Justice Donald Mark, now retired, presided over the pretrial and trial matters.

9. People v. Warney (New York State Supreme Court, Monroe County, Indictment #88, 1996) and People v. Johnson (New York State Supreme Court, Monroe County, Indictment #644, 2006)

Warney was convicted of murder in the second degree in 1997, in large part based on a written confession. I was not involved in this prosecution. In December of 2004, after a motion by Warney to compel DNA testing was denied, I directed my office to reopen the case. Evidence was submitted for DNA testing, and in February of 2006, we were notified of results. In March of 2006, we were notified of a CODIS hit preliminarily matching a DNA profile from the crime scene to Johnson, an inmate in the New York State Department of Corrections. Johnson was interviewed several times, had two attorneys appointed to represent him, provided a DNA sample to confirm the CODIS results, and ultimately in early May admitted he committed the murder in question. The day Johnson confessed, the laboratory confirmed the CODIS DNA match. The information regarding the confession and the DNA match were provided to the defense, and I joined in a motion to set aside Warney's conviction and dismiss the indictment against him. New York State Supreme Court Justice Thomas Van Strydonck granted the motion on May 16, 2006 (Index #1996/001393). Johnson pled guilty to murder and received a sentence of 15 years to life.

I made the decision to reopen the case, supervised the investigation and prosecutions, and made court appearances in connection with the vacation of the plea and dismissal of the indictment. Co-counsel for my office were Wendy Lehmann (1802 Jackson Road, Penfield, New York, 14526, (585) 388-8695), and Larry Bernstein, now retired (he can be contacted through my assistant Karen Farsace at (585) 753-4334).

Warney was represented by Peter Neufeld (100 Fifth Avenue, New York, New York, 10011, (212) 965-9081) and Donald Thompson (16 West Main Street, Suite 243, Rochester, New York, 14614, (585) 423-0060).

Johnson was represented by Scott Young (150 Allens Creek Road, Rochester, New York, 14618, (585) 442-0540).

The Justice who heard and granted the motion to set aside the conviction and dismiss the indictment was NYS Supreme Court Justice Thomas Van Strydonek. The Justice who presided over the Johnson indictment was NYS Supreme Court Justice John Ark.

10. People v. Nicholson (Monroe County Court, Indictment #952, 1990)

In 1990, Nicholson was charged with murder in the second degree in connection with the shooting death of Richard Smith. Nicholson was tried by a jury and convicted in large part on the testimony of one eyewitness, in spite of the fact that the murder happened in the middle of a crowd of over twenty people. He received a sentence of 25 years to life, and the conviction was ultimately affirmed after a remand and hearing regarding a post-conviction motion. People v. Nicholson, 222 AD2d 1055 [4th Dept 1995]; affirmed after remand 238 AD2d 937 [4th Dept 1997]; leave denied 90 NY2d 908; motion for writ of error coram nobis denied, 263 AD2d 972 [4th Dept 1999]. The victim's mother went on to found a homicide survivors support organization called Families and Friends of Murdered Children and Victims of Violence. I have worked with her on this organization since its inception.

I served as lead and sole trial counsel.

The defendant was represented by Louis Pilato (to the best of my knowledge he is no longer in New York State and I do not have a current address or phone number for him)

Monroe County Court Judge Charles Maloy, now retired, was the judge.

18. <u>Legal Activities</u>: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

New York State Commission on Sentencing Reform

From 2007 to 2009, I served on the New York State Commission on Sentencing Reform. The commission met for almost two years and in the course of this time I reviewed and researched New York's current and historical sentencing structure, listened to testimony from a wide variety of individuals, reviewed data, visited correctional institutions and debated changes to the sentencing structure with Commission Chair Denise O'Donnell and the other members of the Commission. I was the only prosecutor of the 11 commission members, and as such tried to represent not only my concerns and views, but

also to the extent possible, those of New York prosecutors. The Commission issued a preliminary report (A Preliminary Proposal for Reform, October 15, 2007) and a final report (The Future of Sentencing in New York State: Recommendations for Reform, January 30, 2009), which were supplied above in response to question 12(b).

New York State Task Force on Transforming Juvenile Justice

In September of 2008, I was appointed to the newly created New York State Task Force on Transforming Juvenile Justice by Governor David Paterson. The Task Force reviewed data, conducted interviews with stakeholders, and consulted national and local juvenile justice experts. The group also visited programs and facilities across New York and in other states. The process resulted in the Task Force issuing 19 recommendations that provided a framework for an effective juvenile justice system grounded in the best available research and literature. These recommendation are contained in our final report (Charting a New Course, A Blueprint for Transforming Juvenile Justice in New York State, December 2009), which were supplied above in response to question 12(b).

I have never served as a lobbyist.

19. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Rochester Institute of Technology - Fall Quarters, 2008, 2009, 2010.

Major Issues in Criminal Prosecution. Syllabi attached.

20. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Pension from the New York State Retirement System for service with the Monroe County District Attorney's Office.

21. Outside Commitments During Court Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no such plans, commitments or agreements.

22. <u>Sources of Income</u>: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items

exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. <u>Statement of Net Worth</u>: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

On occasion my office begins the prosecution of cases that are then adopted for federal prosecution by the United States Attorney's Office or my office's prosecutions occur simultaneously in federal court. If I am confirmed, there may be cases pending in federal court that are based on state charges being prosecuted by my office while I was District Attorney. To address potential conflicts of interest in these cases or any others where issues arise, I would follow the Code of Conduct for United States Judges and all other applicable statutes, rules, policies, procedures and case authority.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed as a United States District Judge, I would resolve all issues relating to potential conflicts of interest by referring to and following the Code of Conduct for United States Judges and all other applicable statutes, rules, policies, procedures and case authority on this topic.

25. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Most recently, I have served the disadvantaged through my work with the Boys and Girls Club of Rochester. My connection to the club started in 2004 when I joined with the Club to found Project Step Up. Step Up is a recreational and educational program for atrisk teens, run at night during the summer months and funded with federal drug forfeiture money from my office. Project Step Up has run every year since 2004, and I have been personally involved in administering and monitoring the program and helping mentor

participants. I have attended numerous sessions of the program every year, spent time mentoring individual participants at the club and outside the club, and have attended graduations and other functions celebrating the success of our members. I am now a member of the Board of Directors of the Club and spend approximately 10 hours per month working on Club related issues in that capacity. On average I would estimate that I visit Club sites or attend club functions between 25 and 50 times per year.

Prior to my work with the Boys and Girls Club, I spent many years as a tutor at School 29 in Rochester through the Lawyers for Learning program. School 29 is in one of the most challenged areas of the City. I tutored first through fourth graders once a week for one hour during the school year.

26. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In January 2009, I contacted Senator Charles E. Schumer's Rochester office to express my interest in the vacancy and to inquire about the process for consideration. I was advised to contact Mark O'Donoghue, Esq., who I was told was the head of Senator Schumer's screening committee for judicial positions. I sent Mr. O'Donoghue an e-mail with a resume attached, expressing my interest and requesting information on the process. I received a response from his assistant with an attached questionnaire to complete. On February 18, 2009, I submitted a confidential questionnaire to the screening committee for Senator Schumer. On May 14, 2009, I interviewed with the screening committee at the offices of Mr. O'Donoghue's law firm in New York City. I was not informed of the results of this process. On May 10, 2010, I met with Senator Schumer in Rochester where he interviewed me regarding my application. On July 13, 2010, Senator Schumer called to inform me that he was forwarding my name to the White House for the vacancy in the Western District of New York.

Since July 27, 2010, I have been in contact with pre-nomination officials at the U.S. Department of Justice. I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C., on November 30, 2010. On January 26, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10 FINANCIAL DISCLOSURE REPORT Report Required by the Ethics in General det of 1928

Rev. 1/2010	NOMINATION FILING			
I. Person Reporting (last name, first, middle in	itisl) 2. Caurt or	Organization	3. Date of Report	
Green, Michael C.	U.S. Distr	ict Coun, NY-W	01/26/2011	
I. Title (Article III judges indicate active or sen magistrate judges indicate full- or part-ti	or status; 5a. Report 'me)	Type (check appropriate type)	6. Reporting Perluit	
		nation, Dote 01/26/2011	01/01/2010	
D.D. District Phoge	Joitin		12/31/2010	
, Chambers or Office Address		Amended Report		
, Chambers of Office Address 47 South Fitzhugh Siteet Rochester, New York 14614	polition]	uis of the information contained to this Report a tions pertaining thereto, it is, in my optaton, in c licable laws and regulations.	and any ampliance	
	Reviewing (OMaer	Date	
		panying this form must befollowed. Compl have no reportable information. Sign on los		
. POSITIONS. (Reporting individua	ol only; see pp. 9-13 of filling instructions.)			
NONE (No reportable positi	ions.)			
PO	SITION	NAME OF ORGA	NIZATION/ENTITY	
Director		Boys and Girls Club of Rochester		
Director		Notional Center for Missing and Exploited Children - NY Branch		
Director		Rise Up Rochester		
Trustee		Trust #1		
Tristee		Trusi #2	-	
Director		American Cancer Society - NY Finger L	akes Region	
Director		Huther Doyle Memorial Institute (Chemi	enl Dependency Treatment)	
Vice President		District Atterneys Association of the Stat	te of New York	
I. AGREEMENTS. (Reporting: NONE (No reportable agree)		ucilans)		
DATE		PARTIES AND TERMS		
1987-2011	New York State Pension Fund - Pe	ension upon reaching retirement age		

FINANCIAL DISCLOSU	Name of Person Reporting			Date of Report							
Page 2 of 7	Green, Michael C.	the state of the state of		01/26/2011							
III. NON-INVESTMENT INCOME. (Responding Individual and spaces; see 1920 1934 of filing Instructions.)											
A. Filer's Non-Investment Income NONE (No reportable non-investment income.)											
DATE	DATE SOURCE AND TYPE				INCOME (yours, not spouse's)						
1, 2009	Monroe County - Dis	strict Attorney salary	and a state of the	\$135,756,72							
2, 2010	Monroe County - District Attorney salary				\$136,699,94						
3. 2009	2009 Rochester Institute of Technology - teaching										
4. 2010	Rachester Institute of	f Technology - teaching			\$2,905.00						
Dollar amount not required except for humonaria.) NONE (No reportable non-invextment income.) DATE SOURCE AND TYPE											
1, 2009	Town of Pinsferd - T	-									
2. 2009	009 Thomson Reuters - salary										
3. 2010	Town of Piersford - To	own Board salary									
4, 2010	Thomson Renters - sn	alary	***************************************								
IV. REIMBURSEMENTS — transportation, balging, food, colterwinnicent. that long to appose and dependent children; see pp. 25-27 of fling insunctions.) NONE (No reportable reimbursements.)											
SOURCE	DATES L	OCATION	PURPOSE	ITEMS PAID	OR PROVIDED						
1. Ехенірі											
2.			***************************************	The second district of the second district of	And the Contract of the Contra						
3.											
4.		71		***************************************							

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Repur:
Page 3 of 7	Green, Michnel C.	01/26/2011
V. GIFTS. (Includes those to sponse and dependent children; see p	np. 28-34 of filing instructions.)	
NONE (No reportable gifts.)		
SOURCE	DESCRIPTION	VALUE
I. Exempt		
2.		•
3.		
4.		
S .		No.
VI. LIABILITIES. (Includes thuse of spouse and dependent	elibiren; see pp. 32-33 of filing instructions.)	
NONE (No reportable liabilities.)		
CREDITOR	DESCRIPTION	YALUE CODE
I.		
2.		
3.		
4.		
5.		

Page 4 of 7 Green, Michael C.						01/26/2011				
vi	I. INVESTMENTS and TRU				Includes the	se of spouse and d	ependent eld	Udren; sei	: pp. 34-60	of filing instructions.)
-	A. B. C. D. Description of Assets Income during Gross value at end Transactions during reporting (including runt assets) reporting period of reporting period									period
	Place "(X)" ofter each asset exempt from prior disclosure	(1) Anjount Code 1 (A-H)	(2) Type (e.g div., rent or int.)	(1) Vulue	Value Nethod Code 3 (Q-W)	(1) Type (e.g., buy, self, restemption)	(2) Date mm/dd/yy	Valne Code 2	(4) Gain Code I (A-H)	(5) Identity of buyer/selfer (if private transaction)
1.	American Funds Tax Exempt Bond Fund of America - A	В	Dividen	d L	Ť	Exempl				
2.	American Funds Growth Fund of America - A (JRA)	A	Dividen	d J	7					
).	American Funds Fundamental Investors - A (IRA)	A	Dividen	d J	Ŧ					
4,	Trust N1 - American Funds AMCAP Fund Class A	A	Dividen	1 0	Т					
5.	Trust #2 - American Funds Growth Fund of America - A	۸	Dividen	d K	Т					
5,	American Funds New Perspective fund - A (IRA)	۸	Dividen	I D	Т					
7.	Thomson Reuters Corp Stock	Α	Dividen	ð K	T					
8.	Fidelity Investments - Core Account (cash)	Α	Interest	,	т					
).	LifePath 2020 Fund T (Thomson Reuters 401 K Plan)		None	М	Т					
IO.	Vanguard Growth Index Fund Inv - Education Savings Account	٨	Dividen	J J	Т					
11.	Vanguard Growth Index Fund inv - Education Savings Account	٨	Dividen	1	Т					
12.	Northwestern Mutual Whole Life Insurance	A	Dividen	d L	т					
3.	Northwestern Mutual Whole Life Insurance	A	Dividen	۱ ا	т					
14.	Northwestern Mutual Whole Life Insurance	A	Dividen	d J	Т					
15.	Northwestern Mutual Whole Life Insurance	Α	Dividen	d)	Т					
6.	Phissford Federal Credit Union - Bank Accounts	٨	Interest	К	т					
17.										
(S 2, V (S	Count: Gaid Code: A = \$1,000 or len so Columer D1 and D4) F = \$50,000 + \$100,000 1=\$15,000 or len O Columer C1 and D3) N = \$21,000,000 73 = \$11,000,000 73 = \$11,000,000 50,000 And Richard Codes O = Appraisi	3,900	8 =51.001 - 53 G =5100.001 - K =515.001 - 5 O =5500.001 -	\$1,000,000 \$50,000 \$1,000,000	L =350,00 Pl =\$1,00	008,000,22 - 109,00 000,0012 - 1 000,008,22 - 100,0 000,008,022 nc/u	112 =hfoi ht =\$100	01 - \$15,000 re than \$3,0 (001 - \$250 00,001 - \$2	00,000 (000	E =\$15,001 - \$50,00
	thic Method Codes Q *Apprairal ce Column C2) U *Book Value		N =Cost (Rest V =Other	Estate Unity)	V =Eritm		1 = CASA			

FINANCIAL DISCLOSURE REPORT Page 5 of 7			Name of Person Reporting Green, Michael C.					
			(Includes the	se of spause and o	lependent eh	ildren; sei	pp. 34-60 v,	f filling Instruction
A. B. Description of Assets Income during (including trust assets) reporting period		C. Gross vakie of end of reporting period		D. Transactions during reporting period				
Amount Code t (A-H)	(2) Type (c.g., div., rent, or int.)	(1) Value Code 2 (I-P)	(2) Value Method Code 3 (Q-W)	(i) Type (e.g., buy, sell, redemption)	(2) Date nm/dd/yy	(3) Value Code 2 (I-P)	(4) Gein Code I (A-H)	(5) Identity of buyer/seller (if private transaction)
					Ī			
					1	-		
		†			1			
	IRUSTS i. me, ussels, or linewisepor (1) Amount Code 1	TRUSTS Income, value, me, ussels, or transactia B. Income during reporting period (1) (2) Annount 1 (2) Annount 1 (3) Aincome 1 (4) Ainco	Green, Micl TRUSTS - Income, value, transactions, me, ussels, or transactions.) B. Income during reporting period of report (1) (2) (4) Amount 1 (2) (3) (4) Amount 4 (4) (4) (4) (5) (6) (6) (6) (6) (6) (6) (6) (6) (6) (6	Green, Michael C. TRUSTS Income, value, transactions fineludes the me, tissels, or transactions.) D. C. Gross value at end of reposing period of reposing period of reposing period (1) (2) (3) (4) (4) (4) (4) (4) (4) (4) (4) (4) (4	Green, Michael C. TRUSTS - income, value, transactions fineludes shore of spanse and a me, tissels, or transactions.) D. C. C. C. C. C. C. C. C. C. C. C. C. C.	Green, Michael C. TRUSTS Income, trains, transactions fineludes those of spanse and dependent elseme, tissels, or transactions.) D. C. Transactions of transactions of preprint period for propring period for propring period for proprint period for period for proprint period for pro	Green, Michael C. TRUSTS - Income, value, transactions (Includes those of spanse and dependent children; see me, (assets, or transactions.) B. Income during creporting period of reporting period of period period of period period of pe	Green, Michael C. TRUSTS - Income, value, transactions (Includes those of spanse and dependent children; see pp. 34-69 upone, (ISSMS, or transactions.) B. Income during Gross value is end of reporting period of reporting period of period period of period period of

,	t. Income Gain Codes:	A =\$1,000 or icss	6 -51,001 · 53,500	C -\$2,501 + \$5,000	D *\$5,001 - \$13,000	E -515,001 - 510,000
	(See Columns B) and D4)	F=\$\$0,601 - \$100,000	000,0001,12 - 100,0012= D	113 ~51,000,001 + \$5,000,000	112 = Nore than \$5,000,000	
	2. Value Codes	J=\$15.000 or has	K -\$15,001 - \$50,000	L -550,001 - \$100,000	N1 -\$100,001 - \$250,000	
•	(See Cohumns C1 and U3)	N =\$250,001 - \$500,000	705,006,12 · 180,0062* Q	000,000,01 - 150,000,12= 19	P2 ~\$5,000,001 - \$15,000,000	
		000,000,002 - 100,000,252= £9		P4 +Niore shan \$50,000,050		
	1. Value biethnii Codes	Q ≠Appraiso{	R -Con (Heat Exche Only)	2 -ymenulen	T =Cash Market	
	(See Culum C3)	U ≠took Value	V =Diher	tt' =Erinasted		
						** **** ****

FINANCIAL DISCLOSURE REPORT Page 6 of 7 Name of Person Reporting Green, Michael C.							
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Report.)							
FINANCIAL DISCLOSURE REPORT	Nume of Person Reporting	Date of Report					

Green, Michael C.

IX. CERTIFICATION,

Page 7 of 7

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and bonorario and the neceptonce of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 ct. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Milal C. Dean.

01/26/2011

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (S U.S.C. app., § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all fiabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES			
Cash on hand and in banks	25	245	Notes payable to banks-secured		3	324
U.S. Government securities			Notes payable to banks-unsecured			
Listed securities - see schedule	320	245	Notes payable to relatives			
Unlisted securities			Notes payable to others			
Accounts and notes receivable:			Accounts and bills due			
Due from relatives and friends			Unpaid income tax			
Due from others			Other unpaid income and interest			
Doubtful			Real estate mortgages payable - personal residence		67	891
Real estate owned - personal residence	214	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable			Other debts-itemize:			
Autos and other personal property	23	330				
Cash value-life insurance	68	456				
Other assets itemize:						
PFCU Line of Credit	4	400				
PFCU Certificate of Deposit	1	000				
			Total liabilities		71	215
			Net Worth		585	461
Total Assets	656	676	Total liabilities and net worth		656	676
CONTINGENT LIABILITIES			GENERAL INFORMATION			
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	NO		
On leases or contracts			Are you defendant in any suits or legal actions?	YES		
Legal Claims			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax						
Other special debt						

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Thomson Reuters Corp.	\$24,045
American Funds – AMCAP	10,540
American Funds - Fundamental Investors	9,107
American Funds Growth Fund	27,797
American Funds - New Perspective	8,082
American Funds - Tax Exempt Bond Fund	54,507
LifePath 2020 Fund T	159,731
Putnam Stable Value Fund	7
Vanguard Growth Index Fund	17,403
Janus Global Select Fund D	9,026
Total Listed Securities	\$320,245
Real Estate Mortgages Payable	
Personal residence - Primary Mortgage	\$54,891
Personal residence - Home equity line of credit	13,000
Total Real Estate Mortgages Payable	\$67,891

AFFIDAVIT

Michael C. Green, do swear that the information provided in is statement is, to the best of my knowledge, true and curate.

nuary 24, 2011

(DATE)

1

(NOTARY)

Jill A. Graby
Notary Public, State of New York
Qualified in County of Monroe
Commission Expires November 3

STATEMENT OF WILMA ANTIONETTE LEWIS, NOMINEE TO BE JUDGE FOR THE DISTRICT COURT OF THE VIRGIN ISLANDS

Ms. Lewis. Yes, indeed I did. And I would like to thank Con-

gresswoman Christensen for that wonderful introduction.

First, though, I will start by thanking President Obama for the honor of this nomination. If I'm confirmed by the Senate, it would be a great privilege for me to have the opportunity to serve in the Virgin Islands, the place that I am always proud to call home. I would also like to thank this Committee for conducting the hearing and for considering my nomination, thank you; Madam Chair, for presiding today; and Senator Grassley, for your presence here as well.

I also would like to thank my current boss, Ken Salazar, for his support throughout the process. He's been a great leader, a wonderful boss, and he has given me his complete support during the course of this process and I would like to thank him for that.

I do have some family members and friends here whom I'd like to introduce. I will start with my immediate family, and first among those is my mother, Juta Lewis, who's sitting behind me, as Congresswoman Christensen mentioned, a former Customs Official, the Assistant District Director of Customs to the Virgin Islands, retiring after 30 years of service.

I would like to acknowledge as well and recognize my late father who's not here with us physically, but I know is here with us in spirit and I'm sure is smiling and is very proud today. It is my mom and my dad to whom I will be eternally grateful for the person whom I have become, because it is their example, it is their love, their support that has made me the person who I am today and I'm very pleased that my mother is here in person and my dad is here in spirit.

I will continue with my brother, Warren Lewis, who is also a public servant with some 37 years under his belt. He's currently the executive officer at Interpol, and previously served with the former Immigration and Naturalization Service in a number of capacities, including as Assistant Regional Commissioner and as District Director of two different jurisdictions.

He's here as well with his wife and my sister-in-law, Jean Lewis, recently retired from the Internal Revenue Service after some 34 years of government service, and my nephew, Aaron Lewis, who will be a senior this year at St. Mary's College of Maryland. He's a scholar/athlete, I'm proud to say, on the honor roll, on the dean's list there, and also quite the soccer player, having returned last night from Puerto Rico after helping the U.S. Virgin Islands National Soccer team secure a victory in Puerto Rico. So I'm pleased that he is back today.

We have some close friends of the family: Leslie Turner, who is the chief legal officer at Coca-Cola, a former colleague and personal friend; Reed Raymond, who is the vice president and administrative officer for the Federal Reserve Bank of Philadelphia. Reed Raymond, another close personal family friend. And also Hon. Thomas Motley, a former colleague of mine and current Superior Court judge here in the District of Columbia.

There are a number of other people in the audience who are supporters. I would like to thank some members of my church who are here today, Faith Moravian Church of the Nation's Capital, who always surround me with a blanket of love and support, and they continue to do so today by their presence here, as well as on the webcast where I know some are watching.

I have some other personal friends here as well, and also some colleagues from the Department of Interior, in particular the corridor, the Assistant Secretary's corridor. They are here as well. They are tremendous colleagues, hardworking public servants, and I thank them for their support. Thank you very much.

Senator KLOBUCHAR. Very good. Thank you.

And then, General Quagliotti.

[The biographical information follows.]

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

Wilma Antoinette Lewis

2. Position: State the position for which you have been nominated.

Judge for the District Court of the Virgin Islands

 Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Department of the Interior 1849 C Street, NW Washington, DC 20240

4. Birthplace: State year and place of birth.

1956; Santurce, Puerto Rico

5. <u>Farcation</u>: List in reverse chronological order each millege, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1978 - 1981; Harvard Law School; J.D., 1981 1974 - 1978; Swarthmore College; B.A. with distinction, 1978

6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2009 – Present
United States Department of the Interior
1849 C Street, NW
Washington, DC 20240
Assistant Secretary, Land and Minerals Management (2009 – Present)
Senior Advisor to the Secretary (2009)

2007 – 2008
Federal Home Loan Mortgage Corporation ("Freddie Mac")
8200 Jones Branch Drive
McLean, Virginia 22102
Managing Associate General Counsel (Litigation)

2001 – 2007 Crowell & Moring LLP 1001 Pennsylvania Avenue, NW Washington, DC 20004 Partner

Fall semesters 1993 – 2006
The George Washington University Law School
2000 H Street, NW
Washington, DC 20052
Adjunct Faculty Member – Professorial Lecturer in Law (Trial Advocacy)
(Served without compensation from 1993 to 2000)

1998 – 2001 Office of the United States Attorney for the District of Columbia Judiciary Center Building 555 Fourth Street, NW Washington, DC 20001 United States Attorney

1995 – 1998 United States Department of the Interior 1849 C Street, NW Washington, DC 20240 Inspector General

1993 – 1995 United States Department of the Interior 1849 C Street, NW Washington, DC 20240 Associate Solicitor, Division of General Law

1986 – 1993
Office of the United States Attorney for the District of Columbia Judiciary Center Building
555 Fourth Street, NW
Washington, DC 20001
Assistant United States Attorney (1986 – 1993)
Deputy Chief, Civil Division (1993)
Assistant Chief, Civil Division (1989 – 1993)

1981 – 1986 Steptoe & Johnson LLP 1330 Connecticut Avenue, NW Washington, DC 20036 Associate

Summer 1980 Steptoe & Johnson LLP 1330 Connecticut Avenue, NW Washington, DC 20036 Summer Associate

Summers 1978 and 1979
Virgin Islands Department of Law (now Virgin Islands Department of Justice)
34-38 Kronprindsens Gade
GERS Building, 2nd Floor
St. Thomas, Virgin Islands 00802
Law Clerk (Summer 1979)
Legal Assistant (Summer 1978)

Other Affiliations (uncompensated):

1991 – 1995; 1997 – 2001; 2006 – Present
Faith Moravian Church of the Nation's Capital
405 Riggs Road, NE
Washington, DC 20011
Member, Board of Trustees/Joint Board (1991 – 1995; 1997 – 2001; 2006 – Present)
Advisor (2009 – Present)
President/Chairman (1993 – 1995; 2000 – 2001; 2006 – 2009)
Secretary (1991 – 1993)

2005 - Present
Moravian Theological Seminary
1200 Main Street
Bethlehem, Pennsylvania 18018
Member, Board of Trustees (2005 - Present)
Advisor (2009 - Present)
Chairman (2007 - 2009)

2007 – 2009 American Arbitration Association 1633 Broadway, 10th floor New York, New York 10019 Member, Board of Directors

2005 – 2009 The High Tea Society 609 Girard Street, NE Washington, DC 20017 Member, Board of Directors

2002 - 2009

Washington Lawyers' Committee for Civil Rights and Urban Affairs 11 Dupont Circle, NW, Suite 400 Washington, DC 20036 Member, Board of Directors

1992 – 1995; 2001 – 2009 Swarthmore College 500 College Avenue Swarthmore, Pennsylvania 19081 Member, Board of Managers

2004 – 2007 District of Columbia Board of Elections & Ethics 441 Fourth Street NW, Suite 250 Washington, DC 20001 Chairman

2002 – 2007 District of Columbia Judicial Nomination Commission 555 Fifth Street, NW, Suite 235 Washington, DC 20001 Commission Member

2001 – 2006 National Institute for Law and Equity, Inc. 2670 Union Avenue Extended, Suite 903 Memphis, Tennessee 38112 Member, Board of Directors

1996 – 1998 Public Administration Forum (no longer in existence) Member, Board of Directors

1984-1986 Washington Area Tennis Patrons Foundation, Inc. (now Washington Tennis and Education Foundation) $16^{\rm th}$ & Kennedy Streets, NW Washington, DC 20011 Member, Board of Directors

Military Service and Draft Status: Identify any service in the U.S. Military, including
dates of service, branch of service, rank or rate, serial number (if different from social
security number) and type of discharge received, and whether you have registered for
selective service.

I have not served in the military. I have not registered for selective service.

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Professional Honors and Awards

- 2003 Featured in the Summer 2003 Harvard Law Bulletin among 50 female graduates of Harvard Law School who have used their legal education "to take them to extraordinary places."
- 2002 Recognition of Service Resolution from the Twenty-Fourth Legislature of the United States Virgin Islands
- 2001 Janet Reno Torchbearer Award for achievement as the first African-American woman to hold the position of United States Attorney for the District of Columbia, commitment to community outreach, and providing opportunities for the advancement of women and minorities, from the Women's Bar Association of the District of Columbia

Charlotte E. Ray Award for demonstrated excellence as a lawyer, significant contributions to the legal community, and trailblazer for African American women in the legal profession, from the Greater Washington Area Chapter, Women Lawyers Division of the National Bar Association and GWAC Foundation, Inc.

Citation for dedication and commitment to service, honoring Charlotte E. Ray Award recipient, from Mayor Anthony Williams, District of Columbia

Dr. Martin Luther King, Jr., Dream Keepers Award for service to humanity and country, from the Martin Luther King, Jr., Celebration Day Committee, Inc., Washington, DC

Bethune-Dubois Institute Award for superb accomplishments as the first presidentially appointed woman and second African-American to serve as United States Attorney for the District of Columbia

Excellence in Leadership Award from the Drug Education for Youth Program, Office of the United States Attorney for the District of Columbia

"Diakonia" Award for service to society, from the Cathedral Church of All Saints, St. Thomas, Virgin Islands

Star of the Bar Honoree, Women's Bar Association of the District of Columbia

Numerous plaques from various law enforcement agencies upon completion of service as United States Attorney for the District of Columbia

2000 Inclusion in Exhibit – "Africana Women at the Dawn of the New Millennium," sponsored by The George Washington University's Gelman Library and the African Women's Nexxus Institute (Alexandria, Virginia), together with the Award for Achievement (Nexxus Institute) and Legal Affairs Achievement Award (Gelman Library)

Outstanding Citizen Award for career achievements and contributions to society, from the Maryland Virgin Islands Association

Certificate of Special Congressional Recognition for outstanding and invaluable service to the community, from The Honorable Donna M. Christensen, Member of Congress from the Virgin Islands

Governor's Citation for service to the Caribbean and American communities, from Governor Parris Glendening of Maryland

Award for outstanding contributions to the development of the United States, from the Caribbean American Intercultural Organization, Inc., Washington, DC

- 1999 Founders' Award for outstanding achievement in service to the legal profession, from the National Black Prosecutors Association
 - Excellence in Public Service Award from the Institute of Caribbean Studies, Washington, DC
- 1998 Women's History Month Honoree, National Political Congress of Black Women, Washington, DC Chapter
- 1996 Rolex Achievement Award presented to a past participant in varsity collegiate tennis in recognition for outstanding career achievements and contributions to society, from Rolex Watch USA and the Intercollegiate Tennis Association
- 1988 and 1989 Department of Justice Special Achievement Awards for sustained superior performance as an Assistant United States Attorney
- 1986 to 1993 (Unsolicited) Letters of commendation from officials in various Federal agencies for work performed as an Assistant United States Attorney at the trial and appellate levels

1982 Outstanding Young Women of America

Collegiate Honors and Awards (Swarthmore College - Swarthmore, Pennsylvania)

1978 Bachelor of Arts degree with distinction
 Phi Beta Kappa
 Joshua Lippincott Fellowship
 All Tournament Team, MIT Invitational Basketball Tournament

- 1977 All Tournament Team, Brown University Invitational Basketball Tournament Women's Athletic Association Blazer Award
- 1976 Two-year Varsity Award in tennis and basketball
- 9. <u>Bar Associations</u>: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Advisory Committee on Local Rules, U.S. District Court for the District of Columbia American Bar Association

American Bar Foundation, Fellow

Attorney General's (Janet Reno) Advisory Committee (ex officio member)

Criminal Justice Coordinating Council for the District of Columbia (formerly known as Memorandum of Understanding Partners)

District of Columbia Bar

Member, District of Columbia Bar Nominations Committee (2008 - 2009)

District of Columbia Judicial Nomination Commission

District of Columbia Women's Bar Association

The Mayor's (Anthony Williams) National Blue Ribbon Commission on Juvenile Justice Reform in the District of Columbia

Minority Corporate Counsel Association

Faculty Advisory Board

Retrospective Advisory Committee to the Standing Committee on Fairness and Access of the District of Columbia Courts

U.S. District Court for the District of Columbia Civil Justice Reform Aet Advisory Group

10. Bar and Court Admission:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

District of Columbia, 1981

Virginia, 2008 (Corporate Counsel, for purposes of employment at Freddie Mac)

There has been no lapse in my District of Columbia bar membership. My Virginia Bar membership expired of its own terms at the end of my tenure with Freddie Mac in 2008.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States (2000)
United States Court of Appeals for the District of Columbia Circuit (1988)
United States Court of Appeals for the Fourth Circuit (2004)
United States Court of Appeals for the Federal Circuit (2006)
United States District Court for the District of Columbia (1982)
District of Columbia Court of Appeals (1981)

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

```
American Arbitration Association
       Member, Board of Directors (2007 - 2009)
American Bar Foundation
       Fellow (2000 - Present)
American Inns of Court
       The William B. Bryant Inn (1993)
Faith Moravian Church of the Nation's Capital (1989 - Present)
       Member, Board of Trustees/Joint Board (1991 - 1995; 1997 - 2001; 2006
       - Present)
       Advisor (2009 - Present)
       President/Chairman (1993 - 1995; 2000 - 2001; 2006 - 2009)
       Secretary (1991 - 1993)
Friends of Swarthmore Athletics
       Member, Advisory Board (1984 - 1986)
Handbell Choirs, Faith Moravian Church of the Nation's Capital
      Founder and Director (2005 - Present)
The High Tea Society
       Member, Board of Directors (2005 - 2009)
Howard University School of Law
      Member, Board of Visitors (2000 - 2002; 2004 - 2009)
```

Moravian Theological Seminary

Member, Board of Trustees (2005 - Present)

Advisor (2009 - Present)

Chairman (2007 - 2009)

Chairman, Student Life and Enrollment Committee (2006 - 2007)

National African-American Drug Policy Coalition

Member, Blue Ribbon Drug Policy Commission (2005 – 2006)

National Institute for Law and Equity, Inc.

Member, Board of Directors (2001 - 2006)

National Youth Leadership Forum on Law

Member, Board of Advisors (2001 - 2007)

Phi Beta Kappa (1978 - Present)

Public Administration Forum

Member, Board of Directors (1996 - 1998)

Swarthmore College

Member, Board of Managers (1992 – 1995; 2001 – 2009)

Swarthmore College Alumni Gospel Choir (1986 - Present)

Member Steering Committee (1991 – 1994)

Virgin Islands Association (1990 - Late 1990's)

Washington Area Tennis Patrons Foundation, Inc. (now Washington Tennis and Education Foundation)

Member, Board of Directors (1984 - 1986)

Washington Lawyers' Committee for Civil Rights and Urban Affairs Member, Board of Directors (2002 - 2009)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of the organizations listed in response to 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Based on my present recollection and a thorough review of available records, I am aware of the following, although it is possible that this list may not be exhaustive. I have made a good faith effort to be as comprehensive as possible and have provided documents reasonably available to me.

Wilma A. Lewis and Stephen M. Byers, Corporate Internal Investigations: Some Basic Considerations, Directors & Boards Boardroom Briefing, Summer 2005. Copy supplied.

A Sense of Self, The Meaning of Swarthmore, ed. Roger Youman, Swarthmore College, 2004. Copy supplied.

Community Prosecution in the Office of the United States Attorney for the District of Columbia, U.S. Attorney's Bulletin, Jan. 2001. I do not have a copy of this Bulletin.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Based on my present recollection and a thorough review of available records, I am aware of the following reports, memoranda or policy statements, although it is possible that this list may not be exhaustive. I have made a good faith effort to be as comprehensive as possible and have provided documents reasonably available to me

Assistant Secretary for the U.S. Department of the Interior

Since assuming office in August 2009, I have issued 25 Public Land Orders (PLOs), Nos. 7736 to 7760. Copies are supplied.

I also contributed to the preparation of the following reports, copies of which are supplied:

Report to the Secretary of the Interior, Outer Continental Shelf Safety Oversight Board, Sept. 1, 2010.

Implementation Report to the Secretary of the Interior on the Reorganization of the Minerals Management Service, July 14, 2010.

Chair, District of Columbia Board of Elections & Ethics

Between 2004 and 2007, I contributed to opinions on the matters that came before the Board. Decisions in which I participated are listed below and copies are supplied:

Montes v. Mesidor, No. 07-003, Mar. 28, 2007.

In re: District of Columbia Independents for Citizen Control Party, No. 07-002, Mat. 16, 2007.

In re: District of Columbia Independent Party, No. 07-001, Jan. 26, 2007.

Williams v. McMahan, No. 06-005, Nov. 7, 2006.

Will Cobb, Candidate, No. 06-001, July 29, 2006.

Drake, et al. v. The Citizens Committee for the D.C. Video Lottery Terminal Initiative of 2004, et al., No. 05-002, Aug. 8, 2005.

In re: December 28, 2004 Submission of Supplemental Petition Sheets in Support of the Video Lottery Terminal Initiative of 2004, No. 05-01, Jan. 6, 2005.

In re: Advisory Neighborhood Commission, Single Member District 5B01, No. 04-26, Dec. 21, 2004.

In re: Advisory Neighborhood Commission, Single Member District 1C07, No. 04-025, Dec. 21, 2004.

In re: DC Citizens to Elect the Next Chief of Police, No. 04-24, Sept. 27, 2004.

Farmer v. Artisst, No. 04-023, Aug. 19, 2004.

Farmer v. Simmons, No. 04-022, Aug. 19, 2004.

Drake, et al. v. Citizens Committee for the D.C. Video Lottery Terminal Initiative of 2004, No. 04-020, Aug. 13, 2004.

In re: D.C. Republican Committee, No. 04-19, June 14, 2004.

In re: "GSA Bill HR 429 International Home Rule Charter Amendment #23," No. 04-18, June 14, 2004.

In re: "Council Members Just Pay Their Parking Tickets Initiative of 2004," No. 04-17, June 14, 2004.

United States Attorney for the District of Columbia

In December 1999, while serving as U.S. Attorney, I convened and chaired the Group Home Task Force, comprised of the U.S. Attorney's Office and several other federal and local law enforcement entities. The Task Force was formed in response to reports of deaths of individuals under the care of group homes for the mentally disabled. At the conclusion of my tenure as U.S. Attorney, the following report on the progress to date was issued:

Group Home Task Force Interim Report, April 19, 2001. Copy supplied.

Inspector General for the U.S. Department of the Interior

During my tenure from 1995 to 1998, I authored five Messages from the Inspector General, which served as the introduction to the Office of Inspector General's semiannual reports to Congress. The five semiannual reports issued under my name are listed below and are supplied:

April 1, 1997 – September 30, 1997 October 1, 1996 – March 31, 1997 April 1, 1996 – September 30, 1996 October 1, 1995 – March 31, 1996 April 1, 1995 – September 30, 1995

Additionally, I officially submitted the semiannual reports to the Secretary of the Interior. The first four reports listed are available on-line at: http://www.doioig.gov/reports/semiannual-report-to-congress. A copy of the fifth report is supplied.

A complete list of internal (151) and contract (44) audit reports performed by OIG staff during the respective periods is contained in the Appendices to the semiannual reports. Some of these audit reports, plus a few others issued between October 1, 1997 and December 30, 1997, are available on-line at http://www.doioig.gov/reports. They are as follows:

Audit Report on the Workmen's Compensation Program of the Government of the Virgin Islands, Dec. 30, 1997.

Audit Report on the Protection and Advocacy of the Marianas, Territory of Guam, Dec. 23, 1997.

Survey Report on Expenditures Claimed Against the Federal Emergency Management Agency's Community Disaster Loan to the Government of the Virgin Islands, Nov. 12, 1997.

Final Audit Report on the Student Bank at Southwestern Indian Polytechnic Institute, Oct. 7, 1997.

Audit Report on Procurement Activities, Port Authority of Guam, Government of Guam, Oct. 7, 1997.

Audit Report on the Servicewide Media Program, National Park Service, Sept. 30, 1997.

Audit Report on School Bus Operations, Department of Public Works, Government of Guam, Scpt. 30, 1997.

Audit Report on the Automated Law Enforcement System, U.S. Fish and Wildlife Service, Sept. 30, 1997.

Survey Report on the Partners for Wildlife Habitat Restoration Program, U.S. Fish and Wildlife Service, Sept. 29, 1997.

Audit Report on Judgment Funds Awarded to the Navajo Nation, Sept. 22, 1997.

Audit Report on Judgment Funds Awarded to the Papago Tribe of Arizona, Sept. 15, 1997.

Audit Report on the Operation and Maintenance of Government Furnished Quarters, Eastern Navajo and Fort Defiance Agency Offices, Bureau of Indian Affairs, Sept. 15, 1997.

Final Audit Report on the Administration of Grants Awarded Under the North American Wetlands Conservation Act, U.S. Fish and Wildlife Service, Aug. 29, 1997.

Audit Report on Management of Herd Levels, Wild Horse and Burro Program, Bureau of Land Management, Aug. 12, 1997.

Audit Report on the Royalty Management Program's Automated Information Systems, Minerals Management Service, July 31, 1997.

Audit Report on Followup of Recommendations Concerning Personnel and Payroll Practices, Legislative Branch, Government of Guam, July 31, 1997.

Audit Report on Followup of Travel by Principal Officials, U.S. Department of the Interior, June 30, 1997.

Audit Report on the Automated Law Enforcement System, National Park Service, June 23, 1997.

Survey Report on the Use of the Government-wide Purchase Card, National Park Service, June 13, 1997.

Audit Report on General Controls Over Automated Information Systems, Operations Service Center, Bureau of Indian Affairs, Apt. 10, 1997.

Audit Report on Mainframe Computer Policies and Procedures, Administrative Service Center, Bureau of Reclamation, Mar. 31, 1997.

Audit Report on the Guam Mass Transit Authority, Government of Guam, Mar. 31, 1997.

Audit Report on Followup of Recommendations Concerning Food Services Operations, Department of Education, Government of Guam, Mar. 26, 1997.

Survey Report on the Special Supplemental Food Program for Women, Infants and Children, Department of Health, Government of the Virgin Islands, Mar. 24, 1997.

Audit Report on the Direct and Guaranteed Loan Programs, Eastern Area Office. Bureau of Indian Affairs, Mar. 10, 1997.

Audit Report on Administratively Uncontrollable Overtime, Department of the Interior, Feb. 27, 1997.

Special Report on the Financial Management Modernization Project, Government of Guam, Feb. 19, 1997.

Biennial Report on the Federal Royalty Management System for Fiscal Years 1994 and 1995, Feb. 19, 1997.

Audit Report on Statement of Assets and Trust Fund Balances at September 30, 1995, of the Trust Funds Managed by the Office of Trust Funds Management, Bureau of Indian Affairs, Dec. 13, 1996.

Special Report on the Cost of Construction of Employee Housing at Grand Canyon and Yosemite National Parks, National Park Service, Dec. 6, 1996.

Audit Report on Office of Surface Mining Reclamation and Enforcement Financial Controls Over the Technical Assistance Agreement With the Republic of Indonesia, Dec. 3, 1996.

Survey Report on Judgment Funds Awarded to the Seminole Nation of Oklahoma, Nov. 7, 1996.

Audit Report on the General Control Environment of the Federal Financial System at the Reston General Purpose Computer Center, U.S. Geological Survey, Oct. 31, 1996.

Survey Report on State Reclamation and Regulatory Grant Programs, Office of Surface Mining Reclamation and Enforcement, Oct. 29, 1996.

Audit Report on the Division of Agriculture, Department of Economic Development and Agriculture, Government of the Virgin Islands, Oct. 21, 1996.

Audit Report on Inventory Management and Valuation, National Mapping Division, U.S. Geological Survey, Sept. 30, 1996.

Audit Report on Occupancy Trespass Resolution, Bureau of Land Management, Sept. 30, 1996.

Audit Report on the Inspection and Enforcement Program and Selected Related Activities, Bureau of Land Management, Sept. 30, 1996.

Audit Report on Withdrawn Lands, Department of the Interior, Sept. 30, 1996.

Audit Report on the Administration of Delinquent Loans by the Phoenix Area Office, Bureau of Indian Affairs, Sept. 30, 1996.

Final Audit Report on Selected Activities of the Royalty Management System, Minerals Management Service, Sept. 30, 1996.

Final Audit Report on Followup of Recommendations Concerning Bureau of Indian Affairs Accountability and Control Over Artwork and Artifacts Located in the Main and South Interior Buildings, Sept. 30, 1996.

Audit Report on Negotiated Royalty Settlements, Minerals Management Service, Sept. 30, 1996.

Audit Report on Extended Travel by Construction Supervisors of the Denver Service Center, National Park Service, Sept. 26, 1996.

Final Survey Report on the Utah Reclamation Mitigation and Conservation Commission, Aug. 27, 1996.

Final Inspection Report on Selected Administrative Activities at the Denver Service Center and the Administrative Program Center, National Park Service, Aug. 9, 1996.

Final Survey Report on Fire Fighter Payroll, Albuquerque Area Office, Bureau of Indian Affairs, Aug. 7, 1996.

Final Audit Report on the Lower Colorado River Basin Development Fund, Bureau of Reclamation, July 30, 1996.

Final Audit Report on Followup of Recommendations Concerning the Valuation of Project Facilities Proposed for Sale, Bureau of Reclamation, July 29, 1996.

Final Special Report on Case Work Load Management at the Hearings Division, Office of Hearings and Appeals, Department of the Interior, July 24, 1996.

Final Audit Report on Nevada Land Exchange Activities, Bureau of Land Management, July 15, 1996.

Final Special Report on Selected Aspects of the Circle of Nations Wahpeton Indian School, June 25, 1996.

Final Audit Report on the Road Construction Program, Bureau of Indian Affairs, June 17, 1996.

Special Report on Contracting With the Environmental Chemical Corporation for a Focused Feasibility Study for Water Treatment and for Water Treatment Services Under Bureau of Reclamation Contract No. 1425-2-CC-40-12260, June 17, 1996.

Final Audit Report on the Office of Management and Budget Circular A-76 Study of Aircraft Services for the Pacific Northwest Region, Bureau of Reclamation, June 10, 1996.

Final Survey Report on Emergency Medical and Search and Rescue Services, National Park Service, June 10, 1996.

Final Special Report on the Royalty Gas Marketing Pilot, Minerals Management Service, May 20, 1996.

Final Audit Report on Grants for the Construction of Health Care Facilities, Government of the Virgin Islands, May 3, 1996.

Final Audit Report on Indian Irrigation Projects, Bureau of Indian Affairs, Mar. 29, 1996.

Final Audit Report on Selected Aspects of the Emergency Reclamation Program, Eastern Support Center, Office of Surface Mining Reclamation and Enforcement, Max. 29, 1996.

Final Audit Report on the Working Capital Fund, Bureau of Reclamation, Mar. 29, 1996.

Final Audit Report on Property Management, U.S. Geological Survey, Mar. 29, 1996.

Final Audit Report on the Safety and Health Program, Department of the Interior, Mar. 29, 1996.

Final Inspection Report on Selected Administrative Activities at the Colorado State Office, Bureau of Land Management, Max. 29, 1996.

Final Inspection Report on Management of Third-Party Drafts at Selected Locations, National Park Service, Mar. 29, 1996.

Final Audit Report on Debt Management, Office of Surface Mining Reclamation and Enforcement and Office of the Solicitor, Mar. 29, 1996.

Final Survey Report on Controls Over Violation Notices, United States Park Police, National Park Service, Mar. 29, 1996.

Final Audit Report on the American Samoa Legislature, American Samoa Government, Mar. 22, 1996.

Final Audit Report on Management of Public Land, Commonwealth of the Northern Mariana Islands, Mar. 20, 1996.

Final Audit Report on the Award and Administration of Contract No. 1425-2-CC-40-12260 With Environmental Chemical Corporation Related to the Summitville Mine Site Cleanup, Bureau of Reclamation, Max. 14, 1996.

Operation & Maintenance of Government Furnished Quarters, U.S. Fish and Wildlife Service, Jan 29, 1996.

Special Report on the Status of Improvements in Financial Management and Program Operations, American Samoa Government, Dec. 22, 1995.

Final Audit Report on Department of the Interior Compliance With Limitations on Lobbying Activities, Dec. 15, 1995.

Final Audit Report for Your Information – 'Special Use Fees, National Park Service', Oct. 31, 1995.

Final Audit Report on the Wapato Irrigation Project, Bureau of Indian Affairs, Sept. 30, 1995.

Final Survey Report on Selected Administrative Activities at Region 6, U.S. Fish and Wildlife Service, Sept. 30, 1995.

Final Audit Report on the Recovery of Operation and Maintenance Costs, Columbia Basin Project. Bureau of Reclamation, Sept. 29, 1995.

Contracting for Reforestation and Forest Development, Bureau of Land Management, Sept. 29, 1995.

Final Audit Report on Followup of Recommendations Concerning the Recovery of Operation and Maintenance Program Expenses, Bureau of Reclamation, Sept. 29, 1996.

Final Audit Report on Federal Grants Administration, Guam Community College, Aug. 22, 1995.

Final Audit Report on Management of International Activities, Division of International Affairs, Bureau of Reclamation, July 7, 1995.

Final Audit Report on Administration of Selected Programs by the Northern Arapaho Tribe, June 9, 1995.

In addition to the internal and contract audits performed by the OIG staff, the OIG also reviewed and processed contract audits performed by other federal auditors and Single Audits performed by non-federal auditors. I did not participate in these audits, which are also listed in the Appendices of the semi-annual reports to Congress disclosed above.

Other Reports

In November 2002, I signed on to an amicus brief to the U.S. Circuit Court of Appeals for the Eleventh Circuit for the case Johnson v. Bush. Copy supplied.

In 1999, in my capacity as United States Attorney, I proposed the Bail Reform Amendment Act of 2000 and the Distribution of Marijuana Amendment Act of 2000, which suggested changes to District of Columbia laws. Copies of both Acts as introduced are supplied.

I served as a member of the U.S. District Court for the District of Columbia Civil Justice Reform Act Advisory Group in 1992-1993. In accordance with the Civil Justice Reform Act, passed by Congress in December 1990, the Advisory Group was charged with investigating the causes of excessive cost and delay in the civil justice system in the District of Columbia and making recommendations aimed at improving the civil litigation process. The work of the Advisory Group was embodied in the following report to the U.S. District Court (no copy available):

Report of the Civil Justice Reform Act Advisory Group (1993) United States District Court for the District of Columbia 333 Constitution Avenue, NW Washington, DC 20001

Following the District Court's review of the recommendations contained in the report, the Court adopted a Civil Justice Reform Act Plan that was filed on November 30, 1993.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Based on my present recollection and a thorough review of available records, I am aware of the following, although it is possible that this list may not be exhaustive. I have made a good faith effort to be as comprehensive as possible and have provided documents reasonably available to me. Because hearings before the Council of the District of Columbia during the relevant period were recorded on a reel-to-reel system, they are not reasonably accessible. In each instance, however, a copy of my statement is supplied.

Testimony

Testimony on Offshore Oil and Gas Exploration before the Committee on Energy & Natural Resources, U.S. Senate, May 18, 2010. Transcript supplied.

Testimony as nominee to be Assistant Secretary for the Department of the Interior before the Committee on Energy & Natural Resources, U.S. Senate, July 9, 2009. Transcript supplied and video is available at http://www.e-spanvideo.org/program/Hearingtocons.

Testimony as nominee to be a member of the Board of Elections and Ethics before Committee on Government Operations, Council of the District of Columbia, Apr. 1, 2004. A copy of my opening statement is supplied.

Testimony on police overtime for court-related appearances before the Subcommittee on District of Columbia Appropriations of the Committee on Appropriations, U.S. House of Representatives, Apr. 4, 2001. Transcript supplied.

Testimony on the DNA Sample Collection Act of 2001 before the Judiciary Committee, Council of the District of Columbia, Mar. 8, 2001. A copy of my opening statement is supplied.

Testimony on the Public Disclosure of Findings and Information in Cases of Child Fatality or Near Fatality Amendment Act of 2000 before the Committee on Human Services, Council of the District of Columbia, Nov. 30, 2000. A copy of my opening statement is supplied.

Testimony on the Child and Youth Safety and Health Omnibus Amendment Act of 2000 before the Committee on Human Services, Council of the District of Columbia, Oct. 26, 2000. A copy of my opening statement is supplied.

Testimony on Amendments to the Drug-Related Nuisance Abatement Act and Boarded Up Vacant Property Permissive Inference of Unlawful Entry Act before the Committee on Consumer and Regulatory Affairs, Council of the District of Columbia, June 14, 2000. A copy of my opening statement is supplied.

Testimony on Amendments to the Sentencing Laws of the District of Columbia before the Judiciary Committee, Council of the District of Columbia, May 11, 2000. A copy of my opening statement is supplied.

Testimony on Amendments to the Controlled Substances Act to Move Marijuana from Schedule V to Schedule III before the Judiciary Committee, Council of the District of Columbia, May 10, 2000. A copy of my opening statement is supplied.

Testimony on Amendments to the Controlled Substances Act to Move Marijuana from Schedule V to Schedule III before the Judiciary Committee, Council of the District of Columbia, January 13, 2000. A copy of my opening statement and press coverage are supplied.

Testimony on the Federal Peace Officer Act before the Judiciary Committee, Council of the District of Columbia, Oct. 1, 1999. A copy of my written statement is supplied.

Testimony on enforcement of drug control laws before the Subcommittee on District of Columbia Appropriations of the Committee on Appropriations, U.S. House of Representatives, Sept. 29, 1999. Transcript supplied.

Testimony on Bail Reform Act before the Judiciary Committee, Council of the District of Columbia, Sept. 20, 1999. A copy of my opening statement is supplied.

Testimony on pre-trial release of charged defendants before the Judiciary Committee, Council of the District of Columbia, Mar. 10, 1999. A copy of my opening statement is supplied.

Testimony before the Special Committee on Police Misconduct and Personnel Management, Council of the District of Columbia, Apr. 29, 1998. A copy of my opening statement is supplied.

Testimony on Audit of Employee Housing at Grand Canyon and Yosemite National Parks before the Subcommittee on Interior and Related Agencies of the Committee on Appropriations, U.S. House of Representatives, Oct. 29, 1997. Transcript supplied.

Testimony on Audit Report No. 96-I-1025, "Nevada Land Exchange Activities, Bureau of Land Management," before the Subcommittee on National Parks, Forests, and Lands of the Committee on Resources, U.S. House of Representatives, July 30, 1996. Transcript supplied.

Testimony on the Federal-Commonwealth of the Northern Mariana Islands Initiative on Labor, Immigration, and Law Enforcement and Related Northern Mariana Islands Legislative Reforms before the Subcommittee on Native American and Insular Affairs of the Committee on Resources, U.S. House of Representatives, June 26, 1996. Transcript supplied.

Statement and Responses to Additional Committee Questions for the Record on proposed budget for the Office of the Inspector General before the Subcommittee on Interior and Related Agencies of the Committee on Appropriations, U.S. House of Representatives, Mar. 27, 1996. Transcript supplied.

Testimony on the Audit of Special Use Fees, National Park Service, and on H.R. 2025 (Proposed Amendments to the Land and Water Conservation Fund Act of 1965) before the Subcommittee on National Parks, Forests, and Lands of the Committee on Resources, U.S. House of Representatives, Oct. 26, 1995. Transcript supplied.

Testimony as nominee to be Inspector General for the Department of the Interior before the Committee on Energy & Natural Resources, U.S. Senate, Feb. 13, 1995. Transcript supplied.

Written Communications

Comments on GAO Draft Report entitled, Oil and Gas Bonds: BLM Needs a Comprehensive Strategy to Better Manage Potential Oil and Gas Well Liability, Feb. 15, 2011. Copy supplied.

Comments on OIG Final Report entitled, Bureau of Land Management's Oil and Gas Inspection and Enforcement Program, Feb. 7, 2011. Copy supplied.

Comments on GAO Final Report entitled, Opportunities Exist to Capture Vented and Flared Natural Gas, Which Would Increase Royalty Payments and Reduce Greenhouse Gases, Feb. 3, 2011. Copy supplied.

Comments on OIG Final Report entitled, Bureau of Land Management Wild Horse & Burro Program, Jan. 26, 2011. Copy supplied.

Comments on OIG Final Report entitled, Follow-Up To Office of Policy Analysis Report, Review of Selective Aspects Of The Federal Helium Program, Jan. 3, 2011. Copy supplied.

Comments on OIG Final Report entitled, Inspector General's Statement Summarizing the Major Management and Performance Challenges Facing the Department of the Interior, Oct. 27, 2010. Copy supplied.

Comments on OIG Final Report entitled, Onshore Oil and Gas: BLM's Management of Public Protests to its Lease Sales Needs Improvement, Oct. 26, 2010. Copy supplied.

Comments on GAO Draft Report entitled, Opportunities Exist to Capture Vented and Flared Natural Gas, Which Would Increase Royalty Payments and Reduce Greenhouse Gases, Oct. 12, 2010. Copy supplied.

Comments on OIG Final Report entitled, Department of the Interior's Management of Land Boundaries, Aug. 6, 2010. Copy supplied.

Comments on GAO Draft Report entitled, Onshore Oil and Gas: BLM's Management of Public Protests to Its Lease Sales Needs Improvement, July 14, 2010. Copy supplied.

Comments on OIG Final Report entitled, Minerals Management Service: Royalty-in-Kind Program's Volume Verification Process, July 8, 2010. Copy supplied.

Comments on GAO Final Report entitled, Oil and Gas Management: Interior's Oil and Gas Production Verification Efforts Do Not Provide Reasonable Assurance of Accurate Measurement of Production Volumes, June 18, 2010. Copy supplied.

Comments on GAO Final Report entitled, Offshore Oil and Gas Development: Additional Guidance Would Help Strengthen the Minerals Management Service's Assessment of Environmental Impacts in the North Aleutian Basin, May 25, 2010. Copy supplied.

Comments on OIG Final Report entitled, *Geothermal Royalties Evaluation*, Apr. 22, 2010. Copy supplied.

Comments on OIG Final Report entitled, BLM and MMS Beneficial Use Deduction, Apr. 21, 2010. Copy supplied.

Comments on OIG Draft Report entitled, Minerals Management Service: Royalty-in-Kind Program's Volume Verification Process, Apr. 15, 2010. Copy supplied.

Comments on OIG Final Report entitled, Department of the Interior's Roads Program: The Dangers of Decentralization, Apr. 9, 2010. Copy supplied.

Comments on OIG Draft Report entitled, Department of the Interior's Management of Land Boundaries, Apr. 2, 2010. Copy supplied.

Comments on OIG Final Report entitled, Museum Collections: Preservation and Protection Issues with Collections Maintained by the Bureau of Land Management, Mar. 12, 2010. Copy supplied.

Comments on GAO Draft Report entitled, Offshore Oil and Gas Development: Additional Guidance Would Help Strengthen the Minerals Management Service's Assessment of Environmental Impacts in the North Aleutian Basin, Mar. 1, 2010. Copy supplied.

Comments on GAO Draft Report entitled, Oil and Gas Management: Interior's Oil and Gas Production Verification Efforts Do Not Provide Reasonable Assurance of Accurate Measurement of Production Volumes, Feb. 26, 2010. Copy supplied.

Letter to Governor Dave Freudenthal re: pending oil and gas leases in Wyoming, Feb. 19, 2010. Copy and press coverage supplied.

Comments on GAO Final Report entitled, Surface Coal Mining: Financial Assurances for, and Long-Term Oversight of, Mines with Valley Fills in Four Appalachian States, Dec. 22, 2009. Copy supplied.

Letter to Governors Haley Barbour, Bobby Jindal, Rick Perry and Bob Riley re: Gulf Security Act payments for drilling leases, Dec. 21, 2009. Copy and press coverage supplied.

Comments on GAO Final Report entitled, Surface Coal Mining: Characteristics of Mining in Mountainous Areas of Kentucky and West Virginia, Nov. 10, 2009. Copy supplied.

Comments on GAO Final Report entitled, MMS Could Do More to Improve the Accuracy of Key Data Used to Collect and Verify Oil and Gas Royalties, Nov. 9, 2009. Copy supplied.

Comments on GAO Final Report entitled, Federal Lands: Enhanced Planning Could Assist Agencies in Managing Increased Use of Off-Highway Vehicles, Oct. 27, 2009. Copy supplied.

Comments on OIG Final Report entitled, Office of the Inspector General's Statement Summarizing the Major Management and Performance Challenges Facing the Department of the Interior, Oct. 21, 2009. Copy supplied.

Comments on GAO Final Report entitled, Federal Land Management: BLM and the Forest Service Have Improved Oversight of the Land Exchange Process, but Additional Actions Are Needed, Scpt. 10, 2009. Copy supplied.

Comments on GAO Final Report entitled, Energy Policy Act of 2005: Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development under Section 390 of the Act, Sept. 8, 2009. Copy supplied.

Comments on GAO Report entitled, D.C. Criminal Justice System: Better Coordination Needed Among Participating Agencies, Mar. 6, 2001. Copy supplied.

Letter to Harold Brazil, Chair, Committee on the Judiciary, Council of the District of Columbia, re: Bail Reform Act, Nov. 14, 2000. Copy supplied.

Letter to Linda Cropp, Chair, Council of the District of Columbia re: Amendments to the Controlled Substances Act To Move Marijuana From Schedule V to Schedule III, Washington, DC, July 3, 2000. Copy supplied.

Letter to Anthony A. Williams, Mayor, District of Columbia re: public disclosure of records after the death of abused or neglected children, July 2000. No copy available; press coverage supplied.

Letter to U.S. Senator Arlen Specter re: request for documents about investigation into alleged technology transfers to China by defense contractors, Apr. 26, 2000. No copy available; press coverage supplied.

Letter to Harold Brazil, Chair, Committee on the Judiciary, Council of the District of Columbia, re: Amendments to the Controlled Substances Act To Move

Marijuana From Schedule V to Schedule III, Washington, DC, Jan. 21, 2000. Copy supplied.

Letter to Linda Cropp, Chair, Council of the District of Columbia re: issues related to defendants on pretrial release, June 22, 1999. Copy supplied.

Letter to the Council of the District of Columbia re: the need for increased penalties for marijuana crimes, Apr. 26, 1999. Copy supplied.

Letter to Harold Brazil, Chair, Committee on the Judiciary, Council of the District of Columbia, re: civil commitment in cases of mental retardation, 1999. No copy available; press coverage supplied.

Response to the Review of the Violent Crimes Task Force of the United States Attorney's Office for the District of Columbia, Oct. 26, 1998. Copy supplied.

Letter to the Council of the District of Columbia about anti-prostitution law, Sept. 11, 1998. No copy available; press coverage supplied.

Letter to The Honorable Arturo Watlington, Jr., Legislature of the Virgin Islands, on Bill No. 21-0265 re: use of unobligated balances of Federal grants, Sept. 27, 1996. Copy supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Based on my present recollection and a thorough review of available records, the following is a list of my speaking engagements, although it is possible that this list may not be exhaustive. I have made a good faith effort to be as comprehensive as possible and have provided documents reasonably available to me.

November 18, 2010: Remarks, Office of Surface Mining Oversight Improvement One-Year Anniversary. A copy of my remarks is supplied.

August 30, 2010: Guest speaker, Southern Governors' Association 2010 Annual Meeting. A copy of my remarks is supplied.

July 12, 2010: Keynote speaker, Federally Employed Women (FEW) 41st National Training Program, Agency Pre-Conference Training Forum. A copy of my remarks is supplied.

March 26, 2010: Panelist, 30th Anniversary of Women's History Month Program, U.S. Department of the Interior. I have no notes, transcript or recording. The address of the Department is 1849 C Street NW, Washington, DC 20240.

March 24, 2010: Remarks, Celebrating Ten Years of the National Landscape Conservation System, U.S. Department of the Interior. A copy of my remarks is supplied.

March 19, 2010: Guest speaker, Memorial Tribute to Michael Coe, Crowell & Moring LLP. A copy of my remarks is supplied.

February 25, 2010: Remarks, Introduction of Secretary of the Interior Ken Salazar, Department of the Interior Black History Month Program, U.S. Department of the Interior. I have no notes, transcript or recording. The address of the Department is 1849 C Street NW, Washington, DC 20240.

February 3, 2010: Panelist, "How to Become a Judge," Women's Bar Association of Washington D.C. and American Constitution Society. Video available on-line at the links below. My remarks were made in segments 6 and 7 and I responded to a question in segment 10.

Part 1: http://www.youtube.com/watch?v=OLypUm BKXc&feature=related

Part 2: http://www.youtube.com/watch?v=Sk D7NHo!_z4&feature=related

Part 3: http://www.youtube.com/watch?v=gceR8B_iclk&feature=related

Part 4: http://www.youtube.com/watch?v=QZB0-9N2Ibw&feature=related

Part 5: http://www.youtube.com/watch?v=nCYkDcojhW4&feature=related

Part 6: http://www.youtube.com/watch?v=wAz2xPbC9nw&feature=related

Part 7: http://www.youtube.com/watch?v=ecW_VrSqJ0&feature=related

Part 9: http://www.youtube.com/watch?v=lli9jpTAguE

Part 10: http://www.youtube.com/watch?v=gOjCCtl6Y5c&feature=related

November 2, 2009: Remarks, White House Clean Energy Economy Forum. A copy of my remarks is supplied and video is available at http://www.c-spanvideo.org/program/EnergyEco.

October 27, 2009: Remarks, Office of Surface Mining (OSM) All-Hands Meeting. I have no notes, transcript or recording. The address of OSM is South Interior Building, 1951 Constitution Avenue NW, Washington, DC 20240.

September 24, 2009. Remarks, Ceremony celebrating update of the <u>Manual of Surveying Instructions</u>, U.S. Department of the Interior. A copy of my remarks is supplied.

September 22, 2009: Remarks, Minerals Management Service/Minerals Revenue Management All-Hands Meeting, Denver, Colorado. I have no notes, transcript or recording. The address of MMS is 1849 C Street, Washington, DC 20240.

September 22, 2009: Remarks, Minerals Management Service/Royalty In-Kind (RIK) All-Hands Meeting, Denver, Colorado. 1 have no notes, transcript or recording. The address of MMS is 1849 C Street, Washington, DC 20240.

August 31, 2009: Remarks, Bureau of Land Management Southern Nevada District Office All-Hands Meeting, Las Vegas, Nevada. I have no notes, transcript or recording. The address of BLM is 1849 C Street, Washington, DC 20240.

August 31, 2009: Remarks, Bureau of Land Management Renewable Energy Summit. A copy of my remarks is supplied and video is available at http://www.ntc.blm.gov/krc/uploads/406/Opening Remarks Keynote.html.

October 21, 2008: Remarks, Investiture of Heidi M. Pasichow as Associate Judge, Superior Court of the District of Columbia. A copy of my remarks is supplied.

June 29, 2008: Guest speaker, Baccalaureate Service, Faith Moravian Church. A copy of my remarks is supplied.

June 27, 2008: Moderator of Plenary Session, Virgin Islands Leadership Summit, Virgin Islands Institute of Development. I have no notes, transcript or recording. The address of the Institute is 1455 Pennsylvania Avenue NW, Suite 400, Washington, DC 20004.

May 10, 2008: Commencement Address, "What Lies Within You," Moravian Theological Seminary, Central Moravian Church. A copy of my remarks is supplied.

April 11, 2008: Remarks, 2008 Judicial & Bar Conference, Asian Pacific American Bar Association of the Greater Washington DC Area, "Increasing Diversity on the Bench: Navigating the Judicial Nomination Process." I have no notes, transcript or recording.

March 31, 2008: Panelist, Institute of Caribbean Studies (ICS) Young Professionals Initiative and Embassy of Barbados, Embassy Evening Series, "From the Legislative Halls to the Corporate Boardrooms: Women Making History in the 21st Century." An outline of my remarks is supplied.

March 25, 2008: Panelist, "Intimate Conversations: Pearls of Wisdom," hosted by the Ladies of Epsilon Sigma Iota Sorority, Inc., Howard University School of Law. I have no notes, transcript or recording. The address of the School of Law is 2900 Van Ness Street NW, Washington, DC 20008.

February 12, 2008: Panelist, Women's Bar Association (WBA) of the District of Columbia, "Carving Pathways to Success." I have no notes, transcript or recording. The address of the WBA is 2020 Pennsylvania Avenue NW, Suite 446, Washington, DC 20006.

August 4, 2007: Keynote address, Virgin Islands Commission on the Status of Women, 2007 Virgin Islands Women's Hall of Fame Ceremony. A copy of my remarks is supplied.

May 26, 2007: Remarks, Tribute to Brother Donald Morant, Faith Moravian Church. A copy of my remarks is supplied.

April 2007: Panelist, Girl Scout Troop 5114 Gold Award Ceremony, Washington, DC. I have no notes, transcript or recording. The address of the Girl Scout Council of the Nation's Capital is 4301 Connecticut Avenue NW, Washington, DC 20008.

August 23 – 24, 2006: Guest speaker, Judicial Selection Processes, Sponsored by the Virgin Islands Bar Association and The Rotary Club, Presentations on St. Thomas and St. Croix, Virgin Islands. A copy of my remarks is supplied.

June 23, 2006: Moderator of Plenary Session, Virgin Islands Leadership Summit, Virgin Islands Institute of Development. I have no notes, transcript or recording. The address of the Institute is 1455 Pennsylvania Avenue NW, Suite 400, Washington, DC 20004.

March 12, 2006: Guest speaker, Women's Fellowship Anniversary Service, Faith Moravian Church. A copy of my remarks is supplied.

November 15, 2005: Guest speaker, Discovery Communications, Inc. Legal Department. An outline of my remarks is supplied.

October 17, 2005: Keynote address, "Managing a High Profile Export Enforcement Case," American Conference Institute National Forum on Export Enforcement and Investigations. An outline of my remarks is supplied.

September 16, 2005: Panelist, Harvard Law School Celebration of Black Alumni, "Promises to Keep-Serving the Public Trust." I have no notes, transcript or recording. The address of HLS is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

August 2005: Panelist, Georgetown Law Center, Professional Career and Litigation Discussion for first year law students. I have no notes, transcript or recording. The address of Georgetown Law Center is 600 New Jersey Avenue NW, Washington, DC 20001.

July 2005: Remarks, Crowell & Moring LLP Minority Reception for first year law students. I have no notes, transcript or recording. The address of Crowell & Moring is 1001 Pennsylvania Avenue NW, Washington, DC 20004.

June 27, 2005: Guest speaker, 2005 Annual Road Show Reception, "Celebrating Law Firm Practice in the Nation's Capital from an African-American Perspective." An outline of my remarks is supplied.

May 28, 2005: Remarks, Tribute to Sister Maxine Garrett, Faith Moravian Church. A copy of my remarks is supplied.

May 20, 2005: Keynote address, Patricia Roberts Harris Graduation Dinner Gala, Black Law Students Association, The George Washington University Law School. A copy of my remarks is supplied.

May 2005: Remarks, Crowell & Moring LLP Reception in conjunction with the annual meeting of the Coalition of Bar Associations of Color. I have no notes, transcript or recording. The address of Crowell & Moring is 1001 Pennsylvania Avenue NW, Washington, DC 20004.

March 16, 2005: Co-Chair Remarks, Going the Extra Mile Fundraiser for Whitman-Walker Clinic Legal Services Program. A description of my remarks is supplied.

February 4, 2005: Opening remarks, Meeting of the National Association of State Election Directors. I have no notes, transcript or recording. The address of the NASED is 12543 Westella, Suite 100, Houston, Texas 77077.

February 2005: Guest speaker, District of Columbia Bar Association, presentation on Judicial Nomination Commission. 1 have no notes, transcript or recording. The address of the Bar Association is 1101 K Street NW, Suite 200, Washington, DC 20005.

November 12, 2004: Keynote address, Howard University School of Law, Wiley A. Branton Howard Law Journal Memorial Symposium. A copy of my remarks is supplied.

June 25, 2004: Moderator of Plenary Session, Virgin Islands Leadership Summit, The Virgin Islands Institute of Development. I have no notes, transcript or recording. The address of the Institute is 1455 Pennsylvania Avenue NW, Suite 400, Washington, DC 20004.

March 24, 2004: Co-Chair Remarks, Going the Extra Mile Fundraiser for Whitman-Walker Clinic Legal Services Program. An outline of my remarks is supplied.

March 18, 2004: Panelist, 2004 District of Columbia Judicial & Bar Conference, "You Be the Judge – Uncovering the Judicial Application Process." I have no notes, transcript or recording. The address of the Bar Association is 1101 K Street NW, Suite 200, Washington, DC 20005.

March 2, 2004: Participant, Book discussion on African Woman: Her Story Through Time by Cynthia Jacobs Carter. I have no notes, transcript or recording. The address of Dr. Carter is Africare House, 440 R Street NW, Washington, DC, 20001.

December 11, 2003: Remarks, Portrait Presentation Ceremony for the Honorable Norma Holloway Johnson, United States District Judge. A copy of my remarks is supplied.

June 9, 2003: Commencement address, Benjamin Banneker Academic High School. A copy of my remarks is supplied.

May 15, 2003: Remarks, 2003 Associates Campaign, Legal Aid Society of the District of Columbia. I have no notes, transcript or recording. The address of the Legal Aid Society is 1331 H Street NW, Suite 350, Washington, DC 20005.

April 8, 2003: Remarks, District of Columbia Bar Board of Governors. I have no notes, transcript or recording. The address of the Bar Association is 1101 K Street NW, Suite 200, Washington, DC 20005.

March 28, 2003: Panelist, District of Columbia Bar Conference, re: Judicial Nomination Commission work and selection process. I have no notes transcript or recording, but Bar Association coverage is supplied. The address of the Bar Association is 1101 K Street NW, Suite 200, Washington, DC 20005.

March 13, 2003: Co-Chair Remarks, Going the Extra Mile Fundraiser for Whitman-Walker Clinic Legal Services Program. A copy of my remarks is supplied.

June 28, 2002: Keynote address, First Annual Alexander Farrelly Public Service Award, St. Thomas, Virgin Islands. A copy of my remarks is supplied.

June 24, 2002: Speaker, Summer Associate Luncheon Program, Crowell & Moring LLP. I have no notes, transcript or recording. The address of Crowell & Moring is 1001 Pennsylvania Avenue NW, Washington, DC 20004.

June 19, 2002: Keynote address, Whitman Walker Clinic Juneteenth Event, Washington, DC. I have no notes, transcript or recording. The address of the Clinic is 1701 14th Street NW, Washington, DC 20009.

June 1, 2002: Remarks, Introduction of Honoree, Maryland Virgin Islands Association Fifth Annual Outstanding Citizen Awards Breakfast, Lanham, MD. I have no notes, transcript or recording. The website for the Virgin Islands Association of the DC Metropolitan Area is www.viadc.org.

May 22, 2002: Guest speaker, District of Columbia Bar Leadership Meeting, Washington, DC. I have no notes, transcript or recording. The address of the Bar Association is 1101 K Street NW, Suite 200, Washington, DC 20005.

March 10, 2002: Guest speaker, Women's Fellowship Anniversary Service, Faith Moravian Church. A copy of my remarks is supplied.

December 10, 2001: Keynote address, "SEC Watchdog: Financial Fraud," Crowell & Moring LLP Business Crimes Meeting. An outline of my remarks is supplied.

November 29, 2001: Remarks, Supreme Court Judicial Fellows and Interns, Supreme Court, Washington, DC. I have no notes, transcript or recording. The address of the Supreme Court is One First Street NE, Washington, DC 20543.

November 16, 2001: Award acceptance remarks, "Diakonia" Award, The Cathedral Church of All Saints, St. Thomas, Virgin Islands. A copy of my remarks is supplied.

September 20, 2001: Keynote address, Women's Bar Association (WBA) of the District of Columbia Annual Fall Kick-Off. A copy of my remarks is supplied.

August 1, 2001: Remarks, Law Clerk Speakers Program, United States Courthouse. I have no notes, transcript or recording. The address of the U.S. District Court is 333 Constitution Avenue NW, Washington, DC 20001.

July 16, 2001: Remarks, Summer Associate Luncheon Program, Crowell & Moring LLP. I have no notes, transcript or recording. The address of Crowell & Moring is 1001 Pennsylvania Avenue NW, Washington, DC 20004.

June 22, 2001: Keynote address, Virgin Islands Judicial Conference, St. Thomas, Virgin Islands. A copy of my remarks is supplied.

June 4, 2001: Keynote address, "What Do Government Prosecutors Really Look For?" Crowell & Moring LLP Health Care Provider Seminar. An outline of my remarks is supplied.

May 22, 2001: Award acceptance remarks, Janet Reno Torchbearer Award, Women's Bar Association of the District of Columbia. A copy of my remarks is supplied.

May 10, 2001: Appreciation remarks, Farewell event for Wilma Lewis as United States Attorney for the District of Columbia. I have no notes, transcript or recording. The address of the Office is 555 4th Street NW, Washington, DC 20530.

May 9, 2001: Award acceptance remarks, Bethune-DuBois Institute, 16th Annual Awards Dinner, Washington, DC. I have no notes, transcript or recording. The address of the Institute is 8630 Fenton Street, Suite 615, Silver Spring, Maryland 20910.

May 3, 2001: Remarks, 7th Annual Virgin Islands High School Appellate Moot Court Competition, sponsored by the Territorial (now Superior) Court of the Virgin Islands and the Virgin Islands Bar Association. An outline of my remarks is supplied.

April 18, 2001: Remarks, Swearing-in Ceremony for new Assistant United States Attorneys, Washington, DC. A copy of the script I used is supplied. The script was also used on the other occasions I performed this ceremony. These dates are listed below:

April 6, 2001 March 30, 2001 October 6, 2000 October 22, 1999 October 16, 1999 March 12, 1999 October 16, 1998 April 17, 1998

April 9, 2001 and April 5, 1999: Remarks, INS Naturalization, Children's Citizenship Day. A copy of my script is supplied.

March 28, 2001: Keynote address, INS Arlington Aslyum Office Women's History Month Program, "Celebrating Women of Courage and Vision." A copy of my remarks is supplied.

March 23, 2001: Remarks, Farewell Luncheon for Jimmy Carter, Assistant Director-in-Charge of FBI's Washington Field Office. A copy of my remarks is supplied.

March 22, 2001: Panelist, George Mason University, "African-American Women and the Shaping of Public Policy." An outline of my remarks is supplied.

March 19, 2001: Guest speaker, Federal City Council Executive Committee Meeting. An outline of my remarks is supplied.

March 13, 2001: Keynote address, National Youth Leadership Forum on Law. An outline of my remarks and my notes are supplied, along with press coverage.

March 8, 2001: Panelist, Embassy of South Africa, International Women's Day Panel Discussion. An outline of my remarks is supplied.

February 6, 2001: Award acceptance remarks, Charlotte E. Ray Award Ceremony, Greater Washington Area Chapter of the Washington Bar Association. A copy of my remarks is supplied.

February 2, 2001: Investiture remarks, Investiture of John Ramsey Johnson, as Associate Judge, Superior Court of the District of Columbia. A copy of my remarks is supplied.

January 19, 2001: Remarks, Introduction of Attorney General Janet Reno, United States Attorney's Office. A copy of my remarks is supplied.

January 18, 2001: Guest speaker, Ceasefire Presentation for Patrol Service Area 102 Community Meeting, Neighborhood Public Safety Committee, Washington, DC. I have no notes, transcript or recording. The address of the Committee is 640 10th Street NE, Washington, DC 20002.

January 14, 2001: Award acceptance remarks, Dr. Martin Luther King Jr., Dream Keepers Award Ceremony, MLK, Jr., Celebration Day Committee, Inc. I have no notes, transcript or recording.

January 11, 2001: Keynote address, Department of Agriculture Martin Luther King Day Celebration. A copy of my remarks is supplied.

December 12, 2000: Opening remarks, "The Future of Juvenile Justice: The Importance of Listening to Youth" Conference, Office of Juvenile Justice and Delinquency Programs, U.S. Department of Justice. I have no notes, transcript or recording. The address of the DOJ is 950 Pennsylvania Avenue NW, Washington, DC 20530.

December 7 – 8, 2000: Opening and Closing remarks, United States Attorney's Office Advanced Criminal Training Conference. A copy of my notes is supplied.

December 5, 2000: Panelist, White House Millenium Council, The President's Initiative for One America and Howard University, "Africana Women at the Dawn of the New Millenium: The Summit." I have no notes, transcript or

recording. The address of the White House is 1600 Pennsylvania Avenue NW, Washington, DC 20500.

December 1, 2000: Guest speaker, Seaton Elementary School Program, sponsored by George Washington University's Americorps Program, re: community prosecution. I have no notes, transcript or recording. The address of the GWU is 805 21st Street NW, Washington, DC 20052.

November 18, 2000: Opening remarks, Weed and Seed City-Wide Conference, Washington, DC. A copy of my remarks is supplied.

November 16, 2000: Remarks, United States Attorney's Office Annual Awards Ceremony. A copy of my remarks is supplied.

November 8, 2000: Opening remarks, United States Attorney's Office Fall Federal Agent Orientation. A copy of my remarks is supplied.

November 2, 2000: Remarks, Fourth District Coummunity Meeting, Metropolitan Police Department. I have no notes, transcript or recording. The address of the MPD is 300 Indiana Avenue NW, Washington, DC 20001.

October 27, 2000: Remarks, Investiture of Thomas J. Motley as Associate Judge, Superior Court of the District of Columbia. A copy of my remarks is supplied.

October 26, 2000: Guest speaker, Rotary Club of Falls Church, Falls Church, VA. A copy of my remarks is supplied.

October 19, 2000: Remarks, Metropolitan Police Department's Fifth District and Citizens' Advisory Council 19th Annual Awards and Recognition Banquet. A copy of my remarks is supplied.

October 13, 2000: Keynote address, Family Life Center Foundation Conference re: Domestic Violence. A copy of my remarks is supplied.

October 13, 2000: Keynote address, 12th Annual National Asian Pacific American Bar Association Convention, "Freedom, Justice and Equality: Reaffirming Our Commitment." A copy of my remarks is supplied.

September 28, 2000: Remarks, Sixth District "Operation Ceasefire" Townhall Meeting. An outline of my remarks is supplied.

September 19, 2000: Panelist, University of the District of Columbia Law School, Women's Law Society Panel. I have no notes, transcript or recording. The address of the law school is 4200 Connecticut Avenue NW, Washington, DC 20008.

September 6, 2000: Guest speaker, Zonta Club of Washington DC Dinner. A copy of my notes is supplied.

August 26, 2000: Award acceptance remarks, Caribbean American Intercultural Organization, Inc., 38th Anniversary of Caribbean Independence, 42nd Anniversary of CAIO. A copy of my remarks is supplied.

August 15, 2000: Welcome remarks, Public Corruption Training for Federal Agency IG Investigators. A copy of my remarks is supplied.

August 12, 2000: Guest speaker, Trinidad Ivy City Community Dedication and Celebration, sponsored by the Trinidad Concerned Citizens for Reform. I have no notes, transcript or recording. The address of the TCCR is 1510 Montello Avenue NE, Washington, DC 20002.

August 9, 2000: Opening remarks, National Black Prosecutors Association Conference. A copy of my remarks is supplied.

August 2, 2000: Remarks, 17th Annual National Night Out Kick-Off Ceremony. A copy of my remarks is supplied.

August 2, 2000: Keynote address, Women in Federal Law Enforcement Awards Luncheon. A copy of my remarks is supplied.

August 1, 2000: Guest speaker, Young Lawyers White Collar Crime Section of the DC Bar Association Luncheon. A copy of my notes is supplied.

July 20, 2000: Guest speaker, Superior Court of the District of Columbia Drug Intervention Program. A copy of my notes is supplied.

July 17, 2000: Opening remarks, National Conference for the Organized Crime Drug Enforcement Task Force. A copy of my remarks is supplied.

July 6, 2000: Remarks, Fourth District Coummunity Meeting, Metropolitan Police Department. A copy of my notes is supplied.

June 28, 2000: Remarks, Hate Crimes Summit, U.S. Department of Justice. A copy of my remarks is supplied.

June 17, 2000: Remarks, The Jamaica Progressive League, Inc. "Controlling Crime & Violence in Jamaica." A copy of my remarks is supplied.

June 12, 2000: Remarks, Drug Education For Youth (DEFY) Graduation Program. A copy of my remarks is supplied.

June 9, 2000: Remarks, Assistant United States Attorneys Association Annual Banquet and Awards Presentation. A copy of my notes is supplied.

June 8, 2000: Guest speaker, Department of the Interior Office of the Solicitor Brown Bag Lunch Series. A copy of my notes is supplied.

June 8, 2000: Guest speaker, Public Safety Town Hall Meeting, "Taking A Bite Out of Crime", sponsored by Councilmember Vincent Orange Sr., Council of the District of Columbia. A copy of my remarks is supplied.

June 7, 2000: Panelist, Public/Private Partnerships, "The Elements of Successful Partnerhips." A copy of my remarks is supplied.

June 5, 2000: Opening remarks, United States Attorney's Office Summer Intern Orientation. A copy of my notes is supplied.

June 3, 2000: Award acceptance remarks, Maryland Virgin Islands Association. A copy of my remarks is supplied.

May 31, 2000: Remarks, United States Attorney's Office 20th Annual Law Enforcement Awards Ceremony. A copy of my remarks is supplied.

May 30, 2000: Remarks, National Bar Association, Annual Supreme Court Swearing-in Ceremony. I have no notes, transcript or recording. The address of the NBA is 1225 11th Street NW, Washington, DC 20001.

May 12, 2000: Guest speaker, Meeting with Federal Law Clerks. A copy of my notes is supplied.

April 27, 2000: Remarks, United States Capitol Police Retirement Luncheon for Chief Gary Abrecht. A copy of my remarks is supplied.

April 27, 2000: Remarks, Third District Citizens' Advisory Council Meeting. A copy of my remarks is supplied.

April 24, 2000: Guest speaker, U.S. Courts in DC, Law Clerks' Speakers Program. I have no notes, transcript or recording. The address of the U.S. District Court is 333 Constitution Avenue NW, Washington, DC 20001.

April 24, 2000: Remarks, Southwest Neighborhood Assembly Annual Meeting, Washington, DC. I have no notes, transcript or recording, but SWNA coverage is supplied. The address of the SWNA is 401 M Street SW, Washington, DC 20024

April 18, 2000: Remarks, Fulton House of Hope/Gospel Rescue Ministries Annual Open House. A copy of my remarks is supplied,

April 13, 2000: Remarks, United States Attorney's Office Crime Victims Rights Awards Ceremony. A copy of my remarks is supplied.

April 12, 2000: Panelist, Litigation Forum of the DC Women's Bar Association, Women in Law Enforcement Luncheon. I have no notes, transcript or recording. The address of the WBA is 2020 Pennsylvania Avenue NW, Suite 446, Washington, DC 20006.

April 11, 2000: Remarks, Meeting with Half Hollow Hills School Children from New York, Half Hollow Hills Center School District. I have no notes, transcript or recording. The address of the District is 525 Half Hollow Road, Dix Hills, New York 11746.

April 10, 2000: Remarks, Sixth District Citizens' Advisory Council Meeting. A copy of my remarks is supplied.

April 9, 2000: Guest speaker, Metropolitan African Methodist Episcopal Program, "Community Prosecution and Community Participation." An outline of my remarks is supplied.

April 6, 2000: Remarks, Near Northeast Citizens Against Crime & Drugs 15th Anniversary Celebration. A copy of my remarks is supplied.

March 31, 2000: Remarks, Washington Area Broadcasters Association annual ascertainment meeting on news needs of the city. I have no notes, transcript or recording. The WABA does not have a physical address.

March 28, 2000: Remarks, Ward 8 Town Hall Meeting, Washington, DC. An outline of my remarks is supplied.

March 27, 2000: Panelist, Southwest Neighborhood Assembly Annual Meeting. A copy of my remarks is supplied.

March 23, 2000: Remarks, United States Attorney's Office Civil Division Retreat. A copy of my notes is supplied.

March 22, 2000: Guest speaker, National Park Service, National Capital Police Women's History Month Program. A copy of my remarks is supplied.

March 17, 2000: Keynote address, Metro Transit Police Recruit Graduation Ceremony. A copy of my remarks is supplied.

March 16, 2000: Remarks, Howard University School of Law, Women's History Month Program. An outline of my remarks is supplied.

March 15, 2000: Panelist, Fourth District Criminal Justice Summit, sponsored by Metropolitan Police Department and the Fourth District Citizens' Advisory Council. A copy of my remarks is supplied.

March 13, 2000: Award acceptance remarks, Africana Women at the Dawn of the New Millennium Exhibition and Program. A copy of my remarks is supplied.

March 9, 2000: Panelist, President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency Annual Conference, "Inspectors General Relationship with Customers and Other Stakeholders." An outline of my remarks is supplied.

March 7, 2000: Guest speaker, Meeting with Judges of the U.S. District Court for the District of Columbia. A copy of my notes is supplied.

March 3, 2000: Keynote address, District of Columbia Bar Winter Convention. A copy of my remarks is supplied.

March 1, 2000: Guest speaker, Second District Citizens' Advisory Council Meeting. Copies of my remarks and notes are supplied.

February 24, 2000: Keynote address, "Neighbors Who Care" Annual Awards Luncheon. A copy of my remarks is supplied.

January 19, 2000: Remarks, North Capital Corridor Revitalization Committee Monthly Meeting. A copy of my remarks is supplied.

January 13, 2000: Remarks, Second District Advisory Neighborhood Commission Meeting, Metropolitan Police Department. I have no notes, transcript or recording. The address of the MPD is 300 Indiana Avenue NW, Washington, DC 20001.

2000: Remarks, Precision Policing Project, Washington, DC. A copy of my remarks is supplied.

2000: Welcome remarks, DC Rape Crisis Center Volunteers. A copy of my remarks is supplied.

December 15, 1999: Remarks, Seventh District Community Meeting. A copy of my remarks is supplied.

December 10, 1999: Guest speaker, Town Hall Meeting sponsored by Mayor Anthony Williams and Councilmember Jim Graham, Council of the District of Columbia. A copy of my remarks is supplied.

December 8, 1999: Remarks, Patrol Service Area 510 Community Meeting. A copy of my remarks is supplied.

December 7, 1999: Remarks, First District Citizens' Advisory Council Meeting. A copy of my remarks is supplied.

November 11, 1999: Award acceptance remarks, Institute of Caribbean Studies 6th Annual Caribbean American Heritage Awards Dinner. A copy of my remarks is supplied.

November 9, 1999: Opening remarks, Eighth International Nigerian Organized Crime Conference. A copy of my remarks is supplied.

October 28, 1999: Remarks, Department of Justice Hate Crimes Conference. A copy of my remarks is supplied.

October 20, 1999: Opening remarks, Child Fatality Review Committee Quarterly Meeting. A copy of my notes is supplied.

October 19, 1999: Remarks, Child Physical Abuse Joint Training Program. A copy of my notes is supplied.

October 2, 1999: Remarks, Introduction of Honorees Walter & Juta Lewis, Moravian Church Virgin Islands Conference Second Annual Recognition Banquet. A copy of my remarks is supplied.

September 20, 1999: Remarks, Bloomingdale Civic Association Meeting. A copy of my remarks is supplied.

September 14, 1999: Opening remarks, United States Attorney's Office Civil Division Training. A copy of my remarks is supplied.

August 11, 1999: Award acceptance remarks, Founders' Award, National Black Prosecutors Assocation Annual Convention. A copy of my remarks is supplied.

August 5, 1999: Keynote address, Asian Pacific American Bar Assocation of the Greater Washington Area Annual Installation Dinner. A copy of my remarks is supplied.

August 4, 1999: Keynote address, National Assocation of Black Customs Enforcement Officers Luncheon. A copy of my remarks is supplied.

August 3, 1999: Remarks, National Night Out Kick-Off Ceremony. A copy of my remarks is supplied.

- August 3, 1999: Keynote speaker, U.S. Capital Police Recruit Graduation Ceremony. A copy of my remarks is supplied.
- August 2, 1999: Remarks, United States Attorney's Office-Wide Address. An outline of my remarks is supplied.
- July 28, 1999: Keynote speaker, Mid-Northeast Collaborative Office Technology Program. A copy of my notes is supplied.
- July 23, 1999: Remarks, United States Information Agency, International Visitor Program, "The Role of Legislators in a Democratic Society." A copy of my remarks is supplied.
- July 8, 1999: Panelist, Washington Area Legal Recruitment Adminstration Association, Minority Summer Associate Reception. An outline of my remarks is supplied.
- June 25, 1999: Remarks, Moderator of Plenary Session, Virgin Islands Leadership Summit, "Agenda for the Year 2000," sponsored by the Virgin Islands Institute of Development. A copy of my notes is supplied.
- June 23, 1999: Panelist, DC Criminal Justice System Panel, sponsored by Councilmember Harold Brazil, Council of the District of Columbia. A copy of my notes is supplied.
- June 22, 1999: Remarks, Drug Education For Youth (DEFY) Graduation Ceremony. A copy of my remarks is supplied.
- June 11, 1999: Remarks, Assistant United States Attorneys Association Annual Banquet and Awards Presentation. A copy of my remarks is supplied.
- June 10, 1999: Remarks, United States Attorney's Office Health Care Fraud Task Force Meeting. Copies of my remarks and notes are supplied.
- June 7, 1999: Opening remarks, United States Attorney's Office Summer Intern Orientation. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 555 4th Street NW, Washington, DC 20001.
- May 28, 1999: Remarks, Fourth District Community Meeting. A copy of my notes is supplied.
- May 18, 1999: Opening remarks, Training Program for DMV Officials. A copy of my notes is supplied.
- May 7, 1999: Remarks, Amidon Elementary School Law Day Celebration. A copy of my remarks is supplied.

May 5, 1999: Opening and Closing remarks, United States Attorney's Office Crime Victims Rights Awards Ceremony. A copy of my remarks is supplied.

May 5, 1999: Keynote address, AARP Consumer University re: fraud against the elderly. A copy of my remarks is supplied.

April 15, 1999: Remarks, Sixth District Community Meeting. A copy of my notes is supplied.

April 14, 1999: Remarks, Judiciary Center Building Fitness Center Grand Re-Opening. A copy of my remarks is supplied.

April 14, 1999: Remarks, Access to Justice Initiative Partnership Meeting with Asian-Pacific American community. A copy of my remarks is supplied.

April 6, 1999: Panelist, Bureau of Justice Assistance National Partnership Meeting. An outline of my remarks is supplied.

March 31, 1999: Opening remarks, United States Attorney's Office Women's History Program. A copy of my remarks is supplied.

March 31, 1999: Remarks, Naylor Dupont Advisory Neighborhood Commission 7B Meeting, Metropolitan Police Department. I have no notes, transcript or recording. The address of the MPD 300 Indiana Avenue NW, Washington, DC 20001

March 30, 1999: Remarks, Ward 7 Town Hall Meeting, sponsored by Councilmember Kevin Chavous, Council of the District of Columbia. A copy of my remarks is supplied.

March 29, 1999: Department of State 41st State Seminar. A copy of my remarks is supplied.

March 26, 1999: Panelist, Women's History Month Program, "Breaking the Glass Ceiling," The Women's History Month Committee, United States Court for the D.C. Circuit. I have no notes, transcript or recording. The address of the Court is 333 Constitution Avenue NW, Washington, DC 20001.

March 25, 1999: Panelist, Charlotte E. Ray American Inn of Court, "Ethics, Integrity and Professional Responsibility." A copy of my remarks is supplied.

March 17, 1999: Remarks, DC Bias-Related Crimes Task Force Meeting. A copy of my remarks is supplied.

March 15, 1999: Opening remarks, Weed and Seed Steering Committee Meeting. A copy of my remarks is supplied.

March 1, 1999: Remarks, Meeting with "Survivors of Homicide." A copy of my remarks is supplied.

February 24, 1999: Opening remarks, Training Conference, Children as Witnesses to Domestic Violence, "Strategy for Healing." A copy of my remarks is supplied.

February 22, 1999: Keynote address, Executive Office of United States Attorneys African-American History Month Program. A copy of my remarks is supplied.

February 22, 1999: Honorary Host remarks, "Neighbors Who Care" Business Card Exchange Mixer. A copy of my remarks is supplied.

February 19, 1999: Opening remarks, United States Attorney's Office African American History Month Celebration. A copy of my remarks is supplied.

February 16 and 18, 1999: Keynote address, INS's African-American History Month Program (Fairfax and Dulles offices). A copy of my remarks is supplied.

February 13, 1999: Remarks, National Black Prosecutors Association, Mid-Year Conference. A copy of my remarks is supplied.

Febraury 1, 1999: Guest speaker, Lamond-Riggs Citizens Association Meeting. An outline of my remarks is supplied.

January 22, 1999: Remarks, Meeting with Judges of the Superior Court of the District of Columbia. A copy of my notes is supplied.

January 21, 1999: Keynote address, Metropolitan Police Boys and Girls Club Annual Installation and Awards Banquet. A copy of my remarks is supplied.

January 14, 1999: Remarks, Law Enforcement Briefing on Clinic Terrorism and Violence. A copy of my remarks and press coverage is supplied.

1999: Keynote address, Jamaican Nationals Association Awards Banquet, Washington, DC. A copy of my remarks is supplied.

1999: Remarks, United States Attorney's Office Management Session on Leave Administration. A copy of my remarks is supplied.

1999: Remarks, Domestic Violence Coordinating Council Workshop, "Sharing of Power, Responsibility, and Vision between Law Enforcement, the Courts, and the Community." A copy of my remarks is supplied.

1999: Remarks, Meeting with United States Attorney's New Management Team. A copy of my remarks is supplied.

1999: Remarks, Meeting with Assistant United States Attorneys in Community Prosecution Major Crimes Section. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 555 Fourth Street NW, Washington, DC 20001.

December 10, 1998: Opening remarks, Office of Juvenile Justice and Delinquency (OJJD) National Conference, "Juvenile Justice: Focus on the Future." A copy of my remarks is supplied.

December 8, 1998: Guest speaker, INS Naturalizaton Ceremony, "Celebrating Our Diversity and the Responsibility of Citizenship." A copy of my remarks is supplied.

November 19, 1998: Remarks, United States Attorney's Office Annual Awards Ceremony. A copy of my remarks is supplied.

November 18, 1998: Opening remarks, Tri-District Hate Crimes Summit. A copy of my remarks is supplied.

November 14, 1998: Remarks, Steptoe & Johnson LLP Retreat, Alumni Panel. A copy of my notes is supplied.

November 10, 1998: Remarks, Mt. Pleasant Advisory National Commission I-E and Patrol Service Area 410 Community Meeting. A copy of my remarks is supplied.

November 9, 1998: Guest speaker, George Washington University Law School Enrichment Program. A copy of my remarks is supplied.

November 5, 1998: Remarks, Pulling America's Communities Together (PACT)/Weed and Seed Quarterly Steering Committee Meeting. A copy of my remarks is supplied.

October 22, 1998: Remarks, Fifth District Citizens' Advisory Council Meeting. Copies of my outline and notes are supplied.

October 19, 1998: Remarks, Tri-District Meeting of United States Attorneys and Supervisors. An outline of my remarks is supplied.

October 16, 1998: Remarks, Gospel Rescue Ministries/Fulton Hotel Ground-Breaking Ceremony. A copy of my remarks is supplied.

October 15, 1998: Remarks, Annual Law Enforcement Memorial. A copy of my remarks is supplied.

October 1, 1998: Remarks, Near Northeast Citizens Against Crime and Drugs Community Meeting. A copy of my remarks is supplied.

September 28, 1998: Guest speaker, DC Bar Association Luncheon, DC Affairs Steering Committee. A copy of my remarks is supplied.

September 14, 1998: Remarks, United States Attorney's Office New Employee Orientation. A copy of my remarks is supplied.

September 12, 1998: Keynote Address, Department of Justice Association of Black Attorneys' (DOJABA) Fifth Annual Career Day. A copy of my remarks is supplied.

August 22, 1998: Guest speaker, Awards Luncheon, Caribbean American Intercultural Organization, Inc. A copy of my remarks is supplied.

August 12, 1998: Guest speaker, Drug Education For Youth (DEFY) Graduation Ceremony. A copy of my remarks is supplied.

July 31, 1998: Investiture remarks during my Oath of Office ceremony to become United States Attorney for the District of Columbia. A copy of my remarks is supplied.

July 12, 1998: Graduation message, Recognition of High School Graduates, Faith Moravian Church. A copy of my remarks is supplied.

July 9, 1998: Guest speaker, Dupont Circle Merchants and Professionals Association Monthly Business Breakfast. A copy of my remarks is supplied.

July 1, 1998: Remarks, FBI Supervisors' Meeting. A copy of my notes is supplied.

June 30, 1998: Guest speaker, Town Hall Meeting with Police Chief Charles Ramsey, hosted by Delegate Eleanor Holmes Norton, re: cooperative efforts to fight crime. An outline of my remarks and press coverage is supplied.

June 30, 1998: Remarks, Meeting with members of Evangelical Lutheran congregations re: crime and violence. I have no notes, transcript or recording. The address of the Evangelical Lutheran Church in America is 8765 W. Higgins Road, Chicago, Illinois 60631.

June 29, 1998: Remarks, Meeting with leaders from the Anti-Defamation League and Jewish Community. I have no notes, transcript or recording. The address of the League is 605 Third Avenue, New York, New York 10158.

June 25, 1998: Remarks, Third District Citizens' Advisory Council Meeting. An outline of my remarks is supplied.

June 23, 1998: Remarks, Presentation at Akin Gump Strauss Hauer & Feld LLP. An outline of my remarks is supplied.

June 22, 1998: Remarks, United States Attorney's Office Receptionist Training Program. A copy of my outline is supplied.

June 20, 1998: Guest speaker, Naylor Dupont Advisory Neighborhood Commission 7B Town Hall Meeting. A copy of my remarks is supplied.

June 16, 1998: Commencement address, R.H. Terrell Junior High School. A copy of my remarks is supplied.

June 15, 1998: Remarks, Bloomingdale Civic Association Meeting. A copy of my remarks is supplied.

June 5, 1998: Remarks, Assistant United States Attorneys Association Annual Banquet and Awards Presentation. A copy of my remarks is supplied.

June 1, 1998: Opening remarks, Affirmative Civil Enforcement Conference for Department of Transportation Personnel. A copy of my notes is supplied.

May 29, 1998: Keynote address, Second District Third Annual Awards Banquet, Metropolitan Police Department. I have no notes, transcript or recording. The address of the MPD is 300 Indiana Avenue NW, Washington, DC 20001.

May 28, 1998: Remarks, Meeting of Fourth District Community Groups. A copy of my remarks is supplied.

May 26, 1998: Guest speaker, Luke C. Moore Academy LEAD Program, "Careers in Law and Law Enforcement." An outline of my remarks is supplied.

May 16, 1998: Commencement address, University of the Virgin Islands. A copy of my remarks is supplied.

May 12, 1998: Guest speaker, Health Care Task Force Meeting, U.S. Attorney's Office. A copy of my remarks is supplied.

May 12, 1998: Guest speaker, The William B. Bryant Inn of Court. A copy of my remarks is supplied.

May 12, 1998: Guest Speaker, Meeting with Judges of the District Court of the District of Columbia. An outline of my remarks is supplied.

May 1, 1998: Remarks, Amidon Elementary School Law Day Celebration. A copy of my remarks is supplied.

April 23, 1998: Remarks, Patrol Service Area 402 Community Meeting, Metropolitan Police Department. I have no notes, transcript or recording. The address of the MPD is 300 Indiana Avenue NW, Washington, DC 20001.

April 23, 1998: Remarks, Fourth Annual Justice for Victims of Crime Awards Program. A copy of my remarks is supplied.

April 16, 1998: Guest speaker, Washington Bar Association. An outline of my remarks is supplied.

March 31, 1998: Honoree remarks, National Political Congress of Black Women DC Chapter, Women's History Month Honorees. A copy of my remarks is supplied.

March 24, 1998: Remarks, Patrol Service Area 108 Community Meeting. A copy of my remarks is supplied.

March 22, 1998: Guest speaker, National Park Service, National Capital Parks-East, Women's History Month Program. An outline of my remarks is supplied.

March 4 – 5, 1998: Guest speaker, Basic Training in Multicultural Housing Enforcement, (Civil, Criminal, and Adminstrative Remedies). An outline of my remarks is supplied.

February 27, 1998: Keynote address, United States Attorney's Office Black History Month Program. A copy of my remarks is supplied.

February 18, 1998: Remarks, Attorney General's Hate Crime Point of Contact Conference. A copy of my remarks is supplied.

February 10, 1998: Panelist, DC Citizens Reform Coalition Community Meeting. A copy of my remarks and press coverage are supplied.

1998: Remarks, Patrol Service Area 109 Community Meeting, Metropolitan Police Department. I have no notes, transcript or recording. The address of the MPD is 300 Indiana Avenue NW, Washington, DC 20001.

1987 – 1998: Lecturer, courses sponsored by the Public Administration Forum, outlines on the basic principles of federal employment discrimination law for presentation and distribution. A copy of my 1991 materials is supplied.

February 23, 1997: Keynote address, National Council of Negro Women, Black Adults of Action Section. A copy of my remarks is supplied.

November 24, 1996: Guest speaker, St. Thomas Business and Professional Women's Annual Appreciation Luncheon, "BPW Women Mean Business." A copy of my remarks is supplied.

October 24 – 25, 1996: Opening and Closing remarks, Affirmative Civil Enforcement Conference, Department of the Interior Office of the Inspector General. I do not have a copy of my opening remarks, but a copy of my closing remarks is supplied.

October 22, 1996: Remarks, First Annual Awards Ceremony and Second Retrospective, Department of the Interior Office of the Inspector General. A copy of my remarks is supplied.

September 16, 1996: Opening remarks, Management Conference, Department of the Interior Office of the Inspector General. A copy of my remarks is supplied.

September 6, 1996: Award acceptance remarks, Rolex Achievement Award Ceremony, Intercollegiate Tennis Association. A copy of my remarks is supplied.

July 28, 1996: Guest speaker, Virgin Islands State Federation Business and Professional Women's Breakfast, Washington, DC. I have no notes, transcript or recording. The address of the BPW is P.O. Box 7323, Sunny Isle, St. Croix, Virgin Islands 00823.

June 14, 1996: Closing remarks, Affirmative Civil Enforcement Conference, Department of the Interior Office of the Inspector General. An outline of my remarks is supplied.

April 10, 1996: Remarks, "Reflect on the Past, Ponder the Present, and Contemplate the Future," Department of the Interior Office of the Inspector General One-Year Retrospective. A copy of my remarks is supplied.

March 26, 1996: Panelist, Seminar on expert witnesses sponsored by the Department of the Interior, Office of the Solicitor, Division of General Law. I have no notes, transcript or recording. The address of the DOI is 1849 C Street NW, Washington, DC 20240.

March 10, 1996: Guest speaker, Women's Fellowship Anniversary Service, Faith Moravian Church. A copy of my remarks is supplied.

March 3, 1996: Remarks, Friendship Evangelism, Faith Moravian Church, Washington. A copy of my remarks is supplied.

February 26, 1996: Closing remarks, Department of the Interior African American History Month Celebration, "African American Women: Yesterday, Today and Tomorrow." A copy of my remarks is supplied.

June 8, 1995: Commencement address, Class of 1995, All Saints Cathedral School, St. Thomas, Virgin Islands. A copy of my remarks is supplied.

March 30, 1995: Remarks, "EEO Trial By Jury" sponsored by the Interagency Attorney Personnel Group, United States Office of Personnel Management. I have no notes, transcript or recording. The address of the OPM is 1900 E Street NW, Washington, DC 20415.

1995: Lecturer, "Training Conference for EEO Managers" sponsored by the Department of the Interior, Bureau of Land Management, Division of Equal Employment Opportunity. I have no notes, transcript or recording. The address of the DOI is 1849 C Street NW, Washington, DC 20240.

1993 to 1995: Faculty, College of Trial Advocacy, a one-week program sponsored by The George Washington University Law School and the District of Columbia Bar Litigation Section. I have no notes, transcript or recording. The address of GWU is 2000 H Street NW, Washington, DC 20052.

May 12, 1994: Keynote address, Department of the Interior Bureau of Mines Women's History Month Program. A copy of my remarks is supplied.

May 1, 1994: Keynote address, Swarthmore Spring Athletic Awards Dinner. A copy of my remarks is supplied.

1994: Lecturer, "Equal Employment Opportunity Summer Training Program" sponsored by the Department of Defense, Office of Inspector General. I have no notes, transcript or recording. The address of the OIG is 400 Army Navy Drive, Arlington, Virginia 22202.

1994: Lecturer, "EEO Investigator Training" sponsored by the Department of the Interior, National Park Service, Equal Opportunity Office. I have no notes, transcript or recording. The address of the NPS is 1849 C Street NW, Washington, DC 20240.

1994: Panelist, Employment Discrimination Litigation Seminar with panel on "Survival Under the New Act – Do Juries Really Make a Difference?" sponsored by the Department of Justice, Office of Legal Education. The address of the DOJ is 950 Pennsylvania Avenue NW, Washington, DC 20530.

November 1, 1992: Guest speaker, Women's Fellowship Anniversary Service, Faith Moravian Church. A copy of my remarks is supplied.

1992: As Assistant Chief of the Civil Division in the Office of the United States Attorney for the District of Columbia, my responsibilities included serving as the training coordinator for the attorneys in the Division. In this capacity, I coordinated, directed and participated in two major in-house training programs. The first program focused on training in each of the substantive areas of law practiced in the Civil Division, and the second was a jury trial training program. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is Judiciary Center Building, 555 4th Street NW, Washington, DC 20001.

1990: Lecturer, "Federal Affirmative Action Conference" sponsored by the Equal Employment Opportunity Commission, Atlanta District Office. I have no notes, transcript or recording. The address of the EEOC Atlanta District Office is Sam Nunn Atlanta Federal Center, 100 Alabama Street SW, Suite 4R30, Atlanta, Georgia 30303.

June 7, 1981: Commencement address, Class of 1981, All Saints Cathedral School, St. Thomas, Virgin Islands. A copy of my remarks is supplied.

June 1974: Valedictory address, All Saints Cathedral School, St. Thomas, Virgin Islands. I have no notes, transcript or recording. The address of the school is P.O. Box 308, St. Thomas, Virgin Islands 00804.

June 1974: Baccalaureate address, All Saints Cathedral School, St. Thomas, Virgin Islands. I have no notes, transcript or recording. The address of the school is P.O. Box 308, St. Thomas, Virgin Islands 00804.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Based on my present recollection and a thorough review of available records, the following is a list of interviews, although it is possible that the list may not be exhaustive. I have provided copies of articles, clips, letters of invitation, or notes reasonably available to me.

Ken Black, Natural Gas Flaring, Venting on Federal Lands and Waters Too Wasteful, GAO Claims, Targeted News Service, Dec. 8, 2010. Copy supplied.

Press Release, Secretary Salazar Commends OSM Initiatives to Improve Oversight, U.S. Department of the Interior, Nov. 23, 2010. Copy supplied.

Press Release, Secretary Salazar Commends OSM Initiatives to Improve Oversight of State Surface Coal Mining Programs, U.S. Department of the Interior, Nov. 18, 2010. Copy supplied.

Press Release, Salazar: OCS Safety Board Report a "Blueprint" for Next Steps on Internal Reforms of Offshore Energy Oversight, U.S. Department of the Interior, Sept. 8, 2010. Copy supplied.

Press Release, Secretary Salazar Launches Onshore Oil and Gas Leasing Reforms, US Federal News, Jan. 7, 2010. Copy supplied.

January 6, 2010: Participant, News Teleconference on Onshore Oil & Gas Leasing Program, U.S. Department of the Interior. Transcript supplied.

Press Release, Interior Strengthens Coal Mining Oversight, Announces Initiatives to Better Protect Streams in Coal Country, U.S. Department of the Interior, Nov. 18, 2009. Copy supplied.

October 20, 2009: Remarks, Media Teleconference on U.S. Oil Shale RD&D Program. I have no transcript or recording.

October 8, 2009: Remarks, Press Conference on Recommendations of Interdisciplinary Team Review of 77 Oil and Gas Parcels in Utah, U.S. Department of the Interior. Transcript supplied.

Press Release, Office of Surface Mining Reclamation and Enforcement Gives Top Honors for Abandoned Mine Land Reclamation, U.S. Department of the Interior, Sept. 28, 2009. Copy supplied.

Joy Blackburn, Virgin Islander Celebrates Confirmation as Undersecretary at Interior, Daily News (Virgin Islands), Aug. 29, 2009. Copy supplied.

Attila Berry, Nathan Carlile and Marisa McQuilken, Keeping Score; Money, Clients, and Culture, Legal Times, Nov. 19, 2007. Copy supplied.

Press Release, Crowell & Moring Client AT&T Receives Court Approval for AT&T-SBC Merger Government Settlement, Crowell & Moring, Apr. 2, 2007. Copy supplied.

Talk 2 Interview regarding judge selection processes, TV 2 (Virgin Islands), Aug. 2006. I have been unable to obtain a copy.

Clarence Williams, Wainstein Named U.S. Attorney in D.C., Washington Post, June 9, 2005. Copy supplied.

Lori Montgomery, \$100,000 Payment Ends D.C. Slots Bid, Washington Post, Feb. 25, 2005. Copy supplied.

Quote in Diversify, Brochure of Crowell & Moring, 2005. Copy supplied.

Integrity in D.C., Washington Post, Oct. 1, 2004. Copy supplied.

Derrill Holly, Appeals Court Bumps Casino Plan Off Ballot, AP Alert, Sept. 28, 2004. Copy supplied.

Serge F. Kovaleski, Board Says Dual System Delayed Vote Count, Washington Post, Sept. 16, 2004. Copy supplied.

Matthew Cella, Court to Hear Slots Appeals, Washington Times, Aug. 13, 2004. Copy supplied.

Heather Greenfield, Elections Board to Determine Cost of Casino Hearings, AP Alert, Aug. 10, 2004. Copy supplied.

Serge F. Kovalcski and Lori Montgomery, Residents Say Names Were Forged, Washington Post, July 24, 2004. Copy supplied.

S.A. Miller, Ex-Adviser to Mayor Will Have Role in Slots Issue, Washington Times, July 21, 2004. Copy supplied.

February 18, 2004: Remarks, Mayor Anthony Williams' Weekly Media Briefing. I have been unable to obtain a copy.

Yolanda Woodlee, Mayor Picks Ex-U.S. Attorney for Elections Post, Washington Post, Feb. 18, 2004. Copy supplied.

Sean Groom, How to Become A Judge, Washington Lawyer, Nov. 2003. Copy supplied.

Vanessa Blum, Bush Budget Seeks to Ease DOJ's Woes, Legal Times, Feb. 10, 2003. Copy supplied.

Todd Bensman, Many Women's Groups Cheer Latest U.S. Attorney Nominee, Dallas Morning News, Jan. 1, 2002. Copy supplied.

Molly Morris, Lawyer Says Perception Comment Misperceived, St. Thomas Source, June 24, 2001. Copy supplied.

Caribbean Perspectives, Howard University, May 23, 2001. I have been unable to obtain a copy.

Stephanie Nazzaro, Departing U.S. Attorney Calls Post "Greatest Honor of my Career," Associated Press, Apr. 21, 2001. Copy supplied.

Tom Campbell, Bombing Case Goes to City Lawyer, Richmond Times Dispatch, Apr. 19, 2001. Copy supplied.

Neely Tucker, D.C. Case Puts Lawyers on Defensive, Washington Post, Apr. 14, 2001. Copy supplied.

April 11, 2001: Remarks, Press Conference on policing for the District of Columbia from federal agencies. Remarks supplied.

Vanessa Blum, Wilma's New Home, Legal Times, Apr. 9, 2001. Copy supplied.

Jim Keary, Oversight Hearing Brings Call to Limit Officers' Court Time, Washington Times, Apr. 5, 2001. Copy supplied.

Neely Tucker, 5th Trial Reject in D.C. Case, Washington Post, Apr. 4, 2001. Copy supplied

Chitra Ragavan, New Life in an Old Probe, U.S. News & World Report, Apr. 2, 2001. Copy supplied.

Tom Schoenberg, Turning the Tables; Changes in Key Political Posts Have Altered D.C.'s Approach to Criminal Justice Policy, Legal Times, Mar. 26, 2001. Copy supplied.

Viveca Novak and Elaine Shannon, Washington Attorney's Office Upset as FBI Takes Away Bombing Case, Time, Mar. 23, 2001. Copy supplied.

Bill Miller, Lewis Resigning Post as U.S. Attorney for D.C., Washington Post, Mar. 16, 2001. Copy supplied.

Jim Keary, Lewis Set to Leave as U.S. Attorney, Washington Times, Mar. 16, 2001. Copy supplied.

Caribbean Perspectives, Voice of America Radio Program, Mar. 14, 2001. I have been unable to obtain a copy.

Jim Keary, Ramsey Says Time Wasted in Court Makes Overtime Soar, Washington Times, Mar. 8, 2001. Copy supplied.

Bill Miller, Weston Can be Treated for Trial, Judge Decides, Washington Post, Mar. 7, 2001. Copy supplied.

Jim Keary, Capitol Killings Suspect Should be Medicated, Judge Says, Washington Times, Mar. 7, 2001. Copy supplied.

March 7, 2001: Remarks, Press Conference on Signing of Interagency Agreement on Child Sexual Abuse Investigation, Prosecution, and Prevention. Remarks supplied.

Judge Allows Suspect to Return Home, Washington Times, Feb. 28, 2001. Copy supplied.

Neely Tucker and Clarence Williams, Slaying Suspect to Await Trial at Home, Washington Post, Feb. 28, 2001. Copy supplied.

Jim Day, St. Thomas' Wilma Lewis Receives Dream Keepers Award, Daily News (Virgin Islands), Feb. 5, 2001. Copy supplied.

Crime & Justice, Washington Post, Dec. 20, 2000. Copy supplied.

Cheryl W. Thompson, Ira Chinoy and Barbara Vobejda, *Unsolved Killings Plague District*, Washington Post, Dec. 3, 2000. Copy supplied.

Bill Miller, D.C. Gang Linked to 15 Slayings, Washington Post, Nov. 21, 2000. Copy supplied.

Jim Keary, Gang's Murder Charges Total 31, Washington Times, Nov. 21, 2000. Copy supplied.

Heather Greenfield, Murder Charges Double to 31 Against D.C. Gang, Associated Press, Nov. 20, 2000. Copy supplied.

November 20, 2000: Press Conference on Kevin Gray Superseding Indictment (racketeering, murder, and Continuing Criminal Enterprise indictment of drug gang). Remarks supplied.

Petula Dvorak and Bill Miller, D.C. Police Seek to Build Forensic Lab, Washington Post, Nov. 16, 2000. Copy supplied.

Peter Hermann and Jay Apperson, FBI in N.Y. Arrests Man in Killing of Md. Trooper, Baltimore Sun, Nov. 14, 2000. Copy supplied.

John Bacon, Manhunt Ends with Arrest in NYC, USA Today, Nov. 14, 2000. Copy supplied.

Jim Keary, Suspect in Cop's Death Arrested in New York, Washington Times, Nov. 14, 2000. Copy supplied.

Jim Keary and John Drake, Ramsey Seen Selling Crime Investigations Short, Washington Times, Nov. 7, 2000. Copy supplied.

Yolanda Woodlee, Group Homes' Debt to D.C.: \$6.8 Million, Washington Post, Oct. 27, 2000. Copy supplied.

Ellen Sorokin, Marina Operator Convicted of Polluting River, Washington Times, Oct. 19, 2000. Copy supplied.

Fireman Found Guilty of Sexual Child Abuse, Washington Times, Oct. 15, 2000. Copy supplied.

Margie Hyslop, Libertarians Feel Need for Weed among D.C. Electorate, Washington Times, Oct. 11, 2000. Copy supplied.

October 11, 2000: Press Conference, Weed and Seed Fall Campaign Announcement (community revitalization and crime reduction). Remarks supplied.

Patrick Healy, Student No Longer Charged in Murder, Boston Globe, Oct. 5, 2000. Copy supplied.

Andrew Donohue, Charges Against Classmate Dropped in Beating Death of Gallaudet Freshman, Star Tribune, Oct. 5, 2000. Copy supplied.

Bill Miller, Apartment Owners Agree to Increase Security, Washington Post, Oct. 5, 2000. Copy supplied.

Neely Tucker and Arthur Santana, Gallaudet Slaying Case is Dropped, Washington Post, Oct.5, 2000. Copy supplied.

Press Release, U.S. Settles with D.C. Landlords Who Did Not Warn Tenants of Lead Paint Risks, U.S. Department of Justice, Oct. 4, 2000. Copy supplied.

October 4, 2000: Press Conference, Cooperation Agreement between Metropolitan Police Department and Amtrak Police Department (under Police Coordination Act of 1997). Remarks supplied.

October 4, 2000: Press Conference, Sexual Assault Nurse Examiner Program (SANE) (collaboration and enhancement of medical and law enforcement efforts). Remarks supplied.

September 28, 2000: Press Conference, "R Street" Settlement (requiring abatement of drug-related nuisance conditions by property owners), Washington, DC, Sept. 28, 2000. Remarks supplied.

Man Guilty in Murder of Girlfriend's Parents, Washington Times, Sept. 26, 2000. Copy supplied.

September 21, 2000: Press Conference, North Capitol Corridor Business Association District, Washington, DC. Remarks supplied.

Arthur Santana, U.S. Attorney Doesn't See a Need for D.C. Night Court, Washington Post, Sept. 2, 2000. Copy supplied.

Arthur Santana, Order to Free Accused D.C. Killer Sparks Outcry, Washington Post, Sept. 1, 2000. Copy supplied.

Man Pleads Guilty on Weapons Charge, Washington Times, Aug. 24, 2000. Copy supplied.

Rob Kampia, Prohibition Lives, It is Killing D.C. Residents, Too, Washington Times, Aug. 21, 2000. Copy supplied.

John Drake, Prosecutors Drop Murder Charge in Slaying of Hotel Worker, Washington Times, Aug. 18, 2000. Copy supplied.

Tom Scheonberg, Mayor Eyes New Role on Crime, Legal Times, Aug. 14, 2000. Copy supplied.

Jim Keary, Court Dockets Keep Cops Off Streets, Washington Times, Aug. 14, 2000. Copy supplied.

John Drake, Major Drug Ring Put Out of Action, Washington Times, Aug. 9, 2000. Copy supplied.

Stacey Pamela Patton, 25 Arrested in Probe of District Drug Ring, Washington Post, Aug. 9, 2000. Copy supplied.

Derrill Holly, Dozens Arrested in Crackdown on Alleged Drug Ring, Associated Press, Aug. 8, 2000. Copy supplied.

August 8, 2000: Press Conference, Langston Terrance Takedown (narcotics (heroin) trafficking indictment). Remarks supplied.

Greg Bishop, Mediation Program Established to Ease Overload in Courts, Washington Times, Aug. 1, 2000. Copy supplied.

July 31, 2000: Press Conference, Kick-Off of Community Misdemeanor Mediation Service (mediation of certain misdemanor cases). Remarks supplied.

Bill Miller, Owners of Troubled Properties Targeted, Washington Post, July 27, 2000. Copy supplied.

Jim Keary, Former Superintendent Admits Cemetery Theft, Washington Times, July 21, 2000. Copy supplied.

Jason Cherkis, False Witness, Washington City Paper, July 21, 2000. Copy supplied.

Allan Lengel, District Toughens Marijuana Penalties, Washington Post, July 12, 2000. Copy supplied.

Tom Schoenberg, Dodging a Bullet, Legal Times, July 3, 2000. Copy supplied.

Courtland Milloy, Surrender Won't Stop the Violence, Washington Post, June 14, 2000. Copy supplied.

Jim Keary, D.C. Contractors Accused of Bribes, Washington Times, June 14, 2000. Copy supplied.

No Charges Filed in Georgetown Death, Washington Times, June 3, 2000. Copy supplied.

Trade Bill for Poorer Nations Goes to China, St. Petersburg Times, May 12, 2000. Copy supplied.

Neely Tucker, Views Invited on Sentencing in D.C., Washington Post, May 11, 2000. Copy supplied.

May 9, 2000: U.S. Attorney's Office Press Conference on arrest of drug gang leader. Press clips on the conference are as follows:

Kevin Gray, Drug Lord, Washington Times, May 15, 2000. Copy supplied.

Bill Miller, D.C. Drug Lord Had 15 Killed, U.S. Charges, Washington Post, May 10, 2000. Copy supplied.

John Drake, Leader of Violent Drug Gang Charged in 15 Murders, Washington Times, May 10, 2000. Copy supplied.

Derrill Holly, Prosecutor Calls Alleged Drug Gang Most Violent Ever, Associated Press, May 9, 2000. Copy supplied.

Carrie Johnson, Judge Gives Up Troubled Case, Legal Times, May 1, 2000. Copy supplied.

April 25, 2000: Press Conference, Guilty Plea and Sentencing of Carl Cooper (triple murder of Starbucks employees and other violent offenses). Remarks supplied.

Government Settles EEO Suit with 508 Mil., Federal EEO Advisor, Apr. 13, 2000. Copy supplied.

April 7, 2000: Press Conference, Kick-Off of Senior Medicare Patrol Project of the District of Columbia (medicare fraud). Remarks supplied.

Five Charged in Drug Operation, Washington Times, Apr. 6, 2000. Copy supplied.

From Wire Dispatches and Staff Reports; U.S. Attorney Files Suit Against Complex Owner, Washington Times, Mar. 31, 2000. Copy supplied.

Jack Lucentini, President, Firm Await Penalties for Exporting Without a License, Journal of Commerce, Mar. 29, 2000. Copy supplied.

Jim Keary, Appeals Court Tells Judge to Reconsider, Washington Times, Mar. 25, 2000. Copy supplied.

Bill Miller, Court Won't Require Medication for Weston, Washington Post, Mar. 25, 2000. Copy supplied.

Jerry Seper, Federal Agencies Settle Sex-Discrimination Suit for \$508 Million, Washington Times, Mar. 24, 2000. Copy supplied.

Brigitte Greenberg, Women Win \$508 Million in Sex Discrimination Settlement, Charleston Gazette, Mar. 23, 2000. Copy supplied.

Brigitte Greenberg, Sex Bias Award Exceeds \$500M, Albany Times Union, Mar. 23, 2000. Copy supplied.

US Agrees to Pay Pounds 317m to End 22-Year Sex Discrimination Case, Birmingham Post (UK), Mar. 23, 2000. Copy supplied.

A Sheriff Named Wilma, City Paper (Washington's Free Weekly), Mar. 10-16, 2000. Copy supplied.

Press Release, Virginia Man Sentenced for Violation of the "No Electronic Thefi" (NET) Act for Unlawful Distribution of Software on the Internet, U.S. Department of Justice, Mar. 3, 2000. Copy supplied.

Kristan Trugman, \$10,000 Reward Offered to Wrap Up Old Slayings, Washington Times, Feb. 24, 2000. Copy supplied.

Kevin Diaz, Double Exposure, Washington City Paper, Feb. 11, 2000. Copy supplied.

Press Release, Virginia Man Pleads Guilty to Charges Filed Under the "No Electronic Theft" (NET) Act for Unlawful Distribution of Software on the Internet, U.S. Department of Justice, Dec. 22, 1999. Copy supplied.

David B. Ottaway and Barbara Vobejda, Weapons' Deadly Journey, Washington Post, Dec. 12, 1999. Copy supplied.

Avram Goldstein and Katherine Boo, D.C. Vows Review of Deaths in Homes, Washington Post, Dec. 6, 1999. Copy supplied.

David Scott, Blue Choice Agrees to Pay 86 Million in Settlement, Associated Press, Dec. 1, 1999. Copy supplied.

November 21, 1999: Viewpoint, NBC-4 re: Operation Ceasefire (gun violence reduction initiative). Video supplied.

Barry to Ask Reno to Probe Sting Plan, Washington Times, Nov. 20, 1999. Copy supplied.

Bill Miller and Vanessa Williams, D.C. 's Barry Remained Target of Law Enforcement Until 1998, Houston Chronicle, Nov. 20, 1999. Copy supplied.

Bill Miller and Vanessa Williams, FBI Planned Another Barry Sting, Washington Post, Nov. 19, 1999. Copy supplied.

November 15, 1999: Press Conference, Operation Ceasefire. Remarks supplied and additional present coverage is listed below:

Ed Laiscell, District Gun Control Effort Expanded, Washington Informer, Nov. 24, 1999. Copy supplied.

November 4, 1999: Press Conference, Ceasefire Press Meeting (public information campaign). Remarks supplied.

October 19, 1999: Press Conference, Indictment of McDonnell Douglas Corporation and China National Aero Technology Import and Export Corporation (violation of export laws and false representations). Remarks supplied and additional press coverage is listed below:

Philip Dine, McDonnell is Indicted Over 1994 Sales to China, St. Louis Post-Dispatch, Oct. 20, 1999. Copy supplied.

Press Release, Mazda Motor of America to Settle Clean Air Case, U.S. Department of Justice, Sept. 30, 1999. Copy supplied.

September 9, 1999: Press Conference, Open House of Fulton House to the Gospel Mission. Remarks supplied.

Public Interest with Kojo Nnamdi, WAMU 88.5 FM, American University Radio, Sept. 2, 1999. Audio recording available at http://thekojonnamdishow.org/shows/1999-09-02.

An Afternoon in D.C., Harvard Law Bulletin, Fall 1999. Copy supplied.

Paul Flatin, Asian-Americans Protest Hate Crimes in U.S., Japan Economic Newswire, Aug. 26, 1999. Copy supplied.

Crime & Justice, Washington Post, Aug. 20, 1999. Copy supplied.

Sandy Ross, Washington Lauds Lewis; Lawyers' Magazine Focuses on St. Thomas Native's Accomplishments, Daily News (Virgin Islands), Aug. 5, 1999. Copy supplied.

Jim Keary, Starbucks Suspect is Indicted in Crime Ring, Washington Times, Aug. 5, 1999. Copy supplied.

Derrill Holly, Accused Starbucks Slayer Indicted, Associated Press, Aug. 4, 1999. Copy supplied.

Cheryl W. Thompson, D.C. to Expand Community Prosecution, Washington Post, Aug. 4, 1999. Copy supplied.

Martin Schneider, U.S. Attorney's Program Forges Ties to Community, Washington Times, Aug. 4, 1999. Copy supplied.

August 3, 1999: Press Conference, United States Attorney's Office Kick-Off of City-Wide Community Prosecution. Remarks supplied.

Tom Schoenberg, House Covets D.C. Victim Fund, Legal Times, Aug. 2, 1999. Copy supplied.

Would-Be Reagan Assassin Cleared for Daytrips, CNN.com, July 26, 1999. Copy supplied.

Jim Keary, Poor Court Scheduling Drains Funds, Washington Times, July 20, 1999. Copy supplied.

July 15, 1999: Press Conference, Lead Based Paint cases (proposed consent decrees). Remarks supplied.

Press Release, U.S. Sues Toyota for Clean Air Act Violations, U.S. Department of Justice, July 12, 1999. Copy supplied.

Metro Talk, WBIG-FM, July 11, 1999. I have been unable to obtain a copy.

Tom Schoenberg, Making Crime the Focus, Legal Times, July 5, 1999. Copy supplied.

Fox 5 Interview re Halfway Homes and Conditions of Release Enforcement Initiative, June 28, 1999. I have been unable to obtain a copy.

Channel 7 Interview re: Conditions of Release Enforcement Initiative, June 28, 1999. I have been unable to obtain a copy.

Interview with Time Magazine re: Community Prosecution Initiative, June 22, 1999. Notes supplied.

Tom Schoenberg, Putting a Lock on "Revolving Door" Justice, Legal Times, June 21, 1999. Copy supplied.

Ronald J. Hansen, District's Juvenile Curfew Reinstated, Washington Times, June 19, 1999. Copy supplied.

Peter Slevin, Court Upholds District Curfew, Washington Post, June 19, 1999. Copy supplied.

Hey! Did You Hear, Diesel Progress, June 1, 1999. Copy supplied.

A Conversation with Wilma A. Lewis, Washington Lawyer, May/June 1999. Copy supplied.

Viewpoint, NBC-4, May 27, 1999. I have been unable to obtain a copy.

May 22, 1999: Press Conference, Refuge of Hope, P Street Properties Renovation Project. Remarks supplied.

Briefly This Week, Medicine & Health, May 17, 1999. Copy supplied.

Bill Miller, Former U.S. Clerk Faces Drug Charges, Washington Post, May 8, 1999. Copy supplied.

Carrie Johnson, Gang Convictions Attacked, Legal Times, May 3, 1999. Copy supplied.

Ronald J. Hansen, Court Action Lets St. Elizabeth Decide if Hinckley Allowed Leave, Washington Times, Apr. 28, 1999. Copy supplied.

Bill Miller, Judges Let Stand Hinckley Ruling, Washington Post, Apr. 28, 1999. Copy supplied.

Will Lester, Appeals Court Won't Block Supervised Day Trips by Hinckley, AP Online, Apr. 27, 1999. Copy supplied.

Fox 5 Television Interview re: Marijuana Laws, Apr. 24, 1999. I have been unable to obtain a copy.

Interview by Michael Hays, Council for Court Excellence "A Conversation With Wilma Lewis," Apr. 22, 1999. Copy supplied.

April 9, 1999: Press Conference, D.C. Tax Fraud Scheme (guilty pleas and charges). Remarks supplied.

Harry Jaffe, Going After Shorty, Washingtonian, Apr. 1999. Copy supplied.

March 26, 1999: Press Conference, Dedication of Mobile Community Outreach Police Substation (MCOPS). Remarks supplied.

Interview with Washington Area Broadcasters Association, Mar. 16, 1999. I have no notes, transcript or recording.

Jim Keary, Starbucks Suspect to Face D.C. Trial First, Washington Times, Mar. 12, 1999. Copy supplied.

Ronald J. Hansen, Starbucks Suspect to Face D.C. Charges Before PG Case, Washington Times, Mar. 7, 1999. Copy supplied.

Ellen Gamerman, D.C. Man Charged in Starbucks Killings, Baltimore Sun, Mar. 6, 1999. Copy supplied.

Jim Keary and Kristan Trugman, Cooper Charged with Starbucks Slayings, Washington Times, Mar. 6, 1999. Copy supplied.

Jim Keary, Police Begin Outreach, Washington Times, Feb. 27, 1999. Copy supplied.

February 24, 1999: Press Conference, AARP/DOJ/HHS Medicare Fraud Fighters Rally. Remarks supplied.

Press Release, Chinese National Arrested and Charged with Illegal Shipment of Riot Control Vehicle, M2 Presswire, Feb. 18, 1999. Copy supplied.

Kalpana Srinivasan, Chinese Man Arrested for Exporting Pepper Gas Truck, AP Online, Feb. 12, 1999. Copy supplied.

Sam Skolnik, Taking It to the Streets, Legal Times, Feb. 8, 1999. Copy supplied.

Cheryl W. Thompson, Hundreds Escaping from Halfway Houses in District, Washington Post, Jan. 24, 1999. Copy supplied.

Crime and Justice, Washington Post, Jan. 22, 1999. Copy supplied.

Eric Lichtblau, Court Clears Hinckley for Short Trips, Chicago Sun-Times, Jan. 16, 1999. Copy supplied.

Ronald J. Hansen, Reagan's Shooter OK'd for Outings, Washington Times, Jan. 16, 1999. Copy supplied.

Anne Gearan, Attempted Reagan Assassin Can Take Day Trips from Hospital, Associated Press, Jan. 15, 1999. Copy supplied.

January 14, 1999: Press Conference, Indictment and arrests of Southeast Drug Organization (rackeetering and murder). Related press coverage is listed below:

Jim Keary, Drug Raid Nabs 22, Washington Times, Jan. 15, 1999. Copy supplied.

Bill Miller, 14 Indicted in Probe of Drug-Related Gang Warfare, Washington Post, Jan. 15, 1999. Copy supplied.

Derrill Holly, Washington Gang Leaders Nabbed in Early Morning Raids, Associated Press, Jan. 14, 1999. Copy supplied.

Press Release, Members of Southeast Drug Organization Indicted and Arrested on Federal Racketeering and Murder Charges, U.S. Attorney's Office, Jan. 14, 1999. Copy supplied.

Crime & Justice, Washington Post, Jan. 8, 1999. Copy supplied.

Bill Miller, Ex-District Employee Admits Role in Kickback Scheme, Washington Post, Dec. 19, 1998. Copy supplied.

Nancy Zuckerbrod, Federal Officials Crack Alleged Green Card Ring, Associated Press, Dec. 16, 1998. Copy supplied.

San Horwitz and Jeff Leen, *Police Step Up Firearms Training*, Washington Post, Dec. 16, 1998. Copy supplied.

December 15, 1998: Press Conference, Indictment in INS "Operation South Side" (counterfeit green card manufacturing ring). Remarks supplied and related press coverage is listed below:

Bill Miller, 5 Indicted in Alleged Fake ID Factory, Washington Post, Dec. 16, 1998. Copy supplied.

María Elena Fernandez, Eleven Are Indicted in International Heroin-Smuggling Ring, Washington Post, Dec. 4, 1998. Copy supplied.

December 2, 1998: Press Conference, Indictment in INS "Operation South Side" (counterfeit green card manufacturing ring). Remarks supplied.

Mike Osenga, Diesel Industry Confronts the Emission Settlement, Diesel Progress, Dec. 1, 1998. Copy supplied.

Nancy Zuckerbrod, Police in the District Said to be Targets, Associated Press, Nov. 19, 1998. Copy supplied.

Carrie Johnson, "Wholesale" Shake-Up at Prosecutor's Shop, Legal Times, Nov. 2, 1998. Copy supplied.

Bill Miller, Update on the News, Washington Post, Oct. 26, 1998. Copy supplied.

October 22, 1998: Remarks, Press Conference on the Clean Air Act Settlement with manufacturers of heavy-duty diesel engines. Transcript supplied.

Sally Brady, 'Murder Hotel' to Become Drug-Healing Site, Washington Times, Oct. 17, 1998. Copy supplied.

September 22, 1998: Remarks, Press Conference on indictments of 10 Southwest D.C. gang members. Remarks supplied and related press coverage listed below:

Maria Elena Fernandez and Bill Miller, 10 Members of SW Gang Indicted on Drug Counts, Washington Post, Sept. 23, 1998. Copy supplied.

Jim Keary, Drug Buyers from Suburbs Risk Crackdown in District, Washington Times, Sept. 23, 1998. Copy supplied.

Jim Keary, Southwest Gang Members Indicted, Washington Times, Sept. 23, 1998. Copy supplied.

Carrie Johnson, Shuffling D.C. Prosecutors, Legal Times, Sept. 7, 1998. Copy supplied.

Peter Slevin, D.C. Liquor Shop Owner Free Until Trial in Beating of Teen, Washington Post, Sept. 5, 1998. Copy supplied.

Bill Miller, New U.S. Attorney Lewis Lays Down the Law, Washington Post, Sept. 3, 1998. Copy supplied.

EPA, Engine Makers Debate Real-World Emissions, Truck News, Aug. 1998. Copy supplied.

John Diamond, Ex-CIA Operative Pleads Guilty, Associated Press, July 28, 1998. Copy supplied.

Walter Pincus and Bill Miller, Ex-CIA Operative Pleads Guilty to Blackmail Attempt at Agency, Washington Post, July 28, 1998. Copy supplied.

Edward Fitzpatrick, Groat Admits CIA Scam, Albany Times Union, July 28, 1998. Copy supplied.

Bill Gertz, Fired CIA Agent's Plea Reduces Charges, Protects Secrets, Washington Times, July 28, 1998. Copy supplied.

Jamie Dettmer, Capital Shame, UPI Insight, July 6, 1998. Copy supplied.

July 1, 1998: Press Conference, Sentencing in <u>U.S. v. Riley</u> (murder of two brothers). Remarks supplied and related press coverage below:

Jim Keary, Mother of Two Slain Sons Sees Three Killers Get Long Sentences, Washington Times, July 2, 1998. Copy supplied.

Carrie Johnson, Ending the Budget Impasse?, Legal Times, June 22, 1998. Copy supplied.

Bill Miller, Ending a Very Long Watch, Washington Post, June 18, 1998. Copy supplied.

Dan Shope, Feds Sue Mack Over Emissions, Morning Call, June 17, 1998. Copy supplied.

Press Release, Justice Department Sues Mack Truck, Inc. Under Clean Air Act, U.S. Department of Justice, June 16, 1998. Copy supplied.

June 8, 1998: Remarks, Press Conference on automotive industry lawsuits. Transcript supplied.

Press Release, American Honda Agrees to \$267 Million Settlement to Resolve Clean Air Act Violations, U.S. Department of Justice, June 8, 1998. Copy supplied.

Jim Keary, 20 Gang Members Busted for Drugs, Washington Times, June 4, 1998. Copy supplied.

Press Release, Indictment and Arrest of members of "7th and O Street Crew" (narcotics trafficking), U.S. Attorney's Office, June 3, 1998. Copy supplied.

Press Release, BFI Pleads Guilty to Illegal Wastewater Discharges, U.S. Department of Justice, June 1, 1998. Copy supplied.

May 21, 1998: Press Conference, Sentencing in <u>U.S. v. Jackson</u> (carjacking). Remarks supplied.

April 23, 1998: Press Conference, Sentencing of Marthell Dean (murder of police officer). Remarks supplied.

Janelle Carter, Ten Motor Vehicle Inspectors Charged with Taking Bribes, Associated Press, Apr. 14, 1998. Copy supplied.

Douglas Waller and Elaine Shannon, The Strange Case of the Spy in the Winnebago, Time, Apr. 13, 1998. Copy supplied.

April 3, 1998: Remarks, Press Conference on arrest of ex-CIA agent on espionage charges. Transcript supplied.

April 2, 1998: Remarks, Press Conference to honor service of interim Police Chief Sonya T. Proctor. I have no notes, transcript or recording. Press coverage of the event is listed below:

Francesca C. Simon, Proctor's Last Moments as Chief Uncomfortable, Washington Times, Apr. 3, 1998. Copy supplied.

Bill Miller, 23 Are Arrested in Probe of Alleged SW Drug Gang, Washington Post, Mar. 6, 1998. Copy supplied.

Jim Keary, Harlan Leans to Leaving Control Board in June, Washington Times, Mar. 5, 1998. Copy supplied.

Jim Keary, Soulsby Pal Pleads Guilty, to Testify Against Ex-Chief, Washington Times, Jan. 27, 1998. Copy supplied.

Paul Butler, An Underused Means to Mend D.C., Legal Times, Jan. 19, 1998. Copy supplied.

Ronald J. Hansen, New U.S. Attorney Touts 'Collaborative Effort', Washington Times, Jan. 17, 1998. Copy supplied.

Bill Miller and Toni Locy, Rooting Out Public Corruption a Top Priority for New U.S. Attorney, Washington Post, Jan. 15, 1998. Copy supplied.

Fox 5 Television Interview with the new United States Attorney for the District of Columbia, Jan. 13, 1998. I have been unable to obtain a copy.

Jan. 1998 – Apr. 2001: During my tenure as U.S. Attorney, the U.S. Attorney's Office regularly issued press releases regarding significant events in cases handled by the office. Many of the press releases included quotes from me, as the United States Attorney. Except for those included in this response, I do not have copies of the press releases reasonably available. The address of the U.S. Attorney's Office is Judiciary Center Building, 555 4th Street NW, Washington, DC 20001.

Stephen Barr, \$330,000 Outhouse? Hill Critics View It as a Matter of Waste, Washington Post, Oct. 30, 1997. Copy supplied.

Saundra Torry, Candidate Named to Succeed Holder, Washington Post, Aug. 15, 1997. Copy supplied.

Jim Keary and Ronald J. Hansen, Norton Backs IG as U.S. Attorney, Washington Times, Aug. 15, 1997. Copy supplied.

August 14, 1997: Press Conference, Announcement by Congresswoman Eleanor Holmes Norton of her decision to recommend Wilma Lewis to President Clinton as the nominee for United States Attorney for the District of Columbia. Remarks supplied.

Member Spotlight, VIA (Virgin Islands Association) News, June 1997. Copy supplied.

John Brinkley, Feds Investigate National Park Service, Rocky Mountain News, Oct. 21, 1995. Copy supplied.

Norma Levin, Appointment as U.S. Inspector General Brings Acclaim to Wilma Lewis, PRIDE (The Monthly Virgin Islands Newsmagazine), Aug. 1995. Copy supplied.

Hal Hatfield, Beautiful Day for V.I.'s Wilma Lewis in New Job, Daily News (Virgin Islands), Apr. 8, 1995. Copy supplied.

13.	Judicial Office:	State (chronologically)	any judicial	offices you hav	e held, includ	ding
	positions as an ac	dministrative law judge,	whether such	n position was	elected or app	oointed,
	and a description	of the jurisdiction of ea	ch such cour	t		

I have not held any judicial office.

a.	Approximately how many cases have you presided over that have gone to verdict or judgment?							
	i.	Of these, approximately what p	these, approximately what percent were:					
		jury trials: bench trials:	% %					
		civil proceedings: criminal proceedings:	<u>%</u>					

- Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

- Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
- 14. <u>Recusal:</u> If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
 - a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;
 - c. the procedure you followed in determining whether or not to recuse yourself;
 - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

15. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Inspector General, United States Department of the Interior (1995 – 1998) – Nominated by President William Clinton, confirmed by the United States Senate

United States Attorney for the District of Columbia (1998 – 2001) - Nominated by President William Clinton, confirmed by the United States Senate

District of Columbia Board of Elections and Ethics (2004 – 2007) – Nominated by the Mayor of the District of Columbia, Anthony Williams, confirmed by the Council of the District of Columbia, designated as Chairman of the Board by Mayor Anthony Williams

Assistant Secretary for Land and Minerals Management, United States Department of the Interior (2009 - Present) - Nominated by President Barack Obama, confirmed by the United States Senate

I have never sought elective office, and I have not had any unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held any paid or unpaid position in, or rendered any services to, a political party or election committee, nor have I held a position or played a role in a political campaign.

16. Legal Career: Answer each part separately.

- Describe chronologically your law practice and legal experience after graduation from law school including:
 - whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

 the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1981 – 1986 Steptoe & Johnson LLP 1330 Connecticut Avenue, NW Washington, DC 20036 Associate

1986 – 1993 Office of the United States Attorney for the District of Columbia Judiciary Center Building 555 Fourth Street, NW Washington, DC 20001

Assistant United States Attorney (1986 – 1993) Assistant Chief, Civil Division (1989 – 1993) Deputy Chief, Civil Division (1993)

1993 – 1995 United States Department of the Interior 1849 C Street, NW Washington, DC 20240 Associate Solicitor, Division of General Law

1995 – 1998 United States Department of the Interior 1849 C Street, NW Washington, DC 20240 Inspector General

1998 – 2001 Office of the United States Attorney for the District of Columbia Judiciary Center Building 555 Fourth Street, NW Washington, DC 20001 United States Attorney

2001 – 2007 Crowell & Moring LLP 1001 Pennsylvania Avenue, NW Washington, DC 20004 Partner

2007 – 2008
Federal Home Loan Mortgage Corporation ("Freddie Mac")
8200 Jones Branch Drive
McLean, Virginia 22102
Managing Associate General Counsel (Litigation)

2009 - Present
United States Department of the Interior
1849 C Street, NW
Washington, DC 20240
Senior Advisor to the Secretary (2009)
Assistant Secretary, Land and Minerals Management (2009 - Present)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

 the general character of your law practice and indicate by date when its character has changed over the years.

From 1981 to 1986, I was an Associate in the General Litigation Group with Steptoe & Johnson LLP, practicing in the areas of insurance, contract, employment discrimination and tort law. My primary responsibilities included legal research; discovery; drafting of pleadings, motions, memoranda and briefs; and the management of small insurance cases.

As an Assistant United States Attorney in the District of Columbia from 1986 to 1989, I was engaged in a very active civil litigation practice, serving as lead counsel in a wide variety of civil cases against the United States, its agencies and officials in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The cases included equal employment opportunity (individual and class actions); tort; government contracts; constitutional claims; claims against Federal officials in their individual capacities; and matters brought under the Administrative Procedure Act, Freedom of Information Act, and Privacy Act. My responsibilities included regular appearances in court and the lead role in all aspects of civil litigation at both the Federal trial and appellate levels.

From 1989 to 1993, while serving in the supervisory positions of Assistant Chief and Deputy Chief of the Civil Division of the United States Attorney's Office, I was part of the senior staff responsible for supervision of the District Court practice and general management of the Division. I was also responsible for the in-house training program for the attorneys in the Division, and the review of personnel matters that arose within the United States Attorney's Office. Court appearances occurred on an occasional basis – principally in connection with significant matters, including, for example, serving as lead counsel in the first jury trial against the Federal Government in the District of Columbia under the Civil Rights Act of 1991, which I co-tried successfully in 1993 with a more junior Assistant United States Attorney.

As the Associate Solicitor for the Division of General Law with the United States Department of the Interior from 1993 to 1995, the focus of my practice was on the management and supervision of a division responsible for legal work in a variety of areas, including equal opportunity compliance, personnel matters, procurement, torts, Freedom of Information Act and Privacy Act appeals, Federal Advisory Committee

Act matters, ethics, general legal services, and legal work involving the territories. I also rendered legal advice to senior officials within the Department on matters within the Division's jurisdiction. In addition to these responsibilities, I performed several special assignments, including: (1) serving as Acting Deputy Solicitor for 3-1/2 months and as Acting Solicitor on several occasions in the absence of the Solicitor; (2) assisting the United States Special Representative for Guam Commonwealth Negotiations (the Department's then Deputy Assistant Secretary for Policy, Management and Budget) with legal and other matters related to those negotiations, which involved extensive discussions with officials from other Federal agencies and Guam; and (3) working on legal matters arising under the Hawaiian Homes Commission Act, which involved issues regarding the status and entitlement of Native Hawaiians.

As the Inspector General for the Department of the Interior from 1995 to 1998, I managed and supervised the office responsible for: (1) conducting independent and objective audits and investigations (criminal, civil and administrative) designed to promote economy, efficiency, and effectiveness and to prevent and detect fraud, waste and mismanagement in the Department's programs and operations; (2) performing the function of government comptroller, under the Insular Areas Act of 1982, in Guam, American Samoa, the Virgin Islands and the Commonwealth of the Northern Mariana Islands through audits of federal and local revenues. receipts, expenditures and property; and (3) performing audit responsibilities in the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau pursuant to the Compact of Free Association Act of 1985. Matters investigated included allegations of fraud in a variety of contexts, false statements, theft or embezzlement, corruption, conflict of interest, and attendant crimes, e.g., mail fraud, wire fraud, and conspiracy. As Inspector General, I became involved with legal questions and issues, as necessary, in consultation with the General Counsel and his staff. Such issues typically involved the interpretation of laws, rules, and regulations that arose in the conduct of audits and investigations.

As the United States Attorney for the District of Columbia from 1998 to 2001, I oversaw, managed and supervised the largest United States Attorney's Office in the country with over 350 attorneys and the unique responsibility of serving as both federal and local prosecutor. The Office handles a broad range of: (1) federal defensive civil matters including equal employment opportunity, government contracts, constitutional claims, lawsuits under the Federal Tort Claims Act, matters under the Freedom of Information Act and Privacy Act, challenges to agency action under the Administrative Procedure Act, and lawsuits against government officials in their individual capacities, as well as affirmative civil enforcement matters; (2) federal criminal matters, including public

corruption and government fraud, major narcotics trafficking, economic crimes, gang prosecutions, civil rights violations, and transnational matters; and (3) local crimes committed by adults in the District of Columbia ranging from misdemeanors to major felonies. As necessary, I became personally involved in some of the more significant cases handled by the Office, including by reviewing and analyzing documents and briefing materials; evaluating evidence; participating in meetings, briefings and other presentations with the Attorney General and other Department of Justice attorneys, Assistant United States Attorneys, federal and local law enforcement officials, agency attorneys, and criminal defense counsel; making major litigation and prosecution decisions; and providing recommendations to the Attorney General on matters that fell within her decision-making purview.

As a partner at Crowell & Moring LLP from 2001 to 2007, I focused principally on complex civil litigation, while also conducting internal investigations. My general litigation practice included cases in several substantive areas, including employment discrimination, personnel matters, commercial and other contractual arrangements, tort, intellectual property (patents) and antitrust. Internal investigations included allegations of kickbacks, false statements, and fraud. Appearances in court were occasional, consistent with the typical litigation practice in a large law firm.

As the Managing Associate General Counsel for Litigation at the Federal Home Loan Mortgage Corporation ("Freddie Mac") from 2007 to 2008, I supervised a small group of attorneys who comprised the General Litigation Group. This Group was responsible for offensive and defensive litigation, and providing litigation risk mitigation advice to the business areas. The cases were litigated before both administrative bodies and courts, and during my tenure, included equal employment opportunity, intellectual property, tort, antitrust, fraud, contract, and securities, among others. Outside counsel was usually retained to represent the Corporation in court, with the in-house Litigation Group serving in an active support role.

From 1993 to 2006, I was an adjunct faculty member at The George Washington University Law School where I assisted in teaching a trial advocacy course during the fall semester. In addition, from 1987 to 1998, I lectured on issues of employment discrimination law in programs sponsored by the Public Administration Forum, a non-profit corporation that presented training programs in the field of federal employment.

 your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

The clients on whose cases I worked while at the law firm of Steptoe & Johnson from 1981 to 1986 were typically corporate clients, many of which were in the railroad and insurance industries. As an Assistant United States Attorney from 1986 to 1993, my client was the United States, represented by the various agencies of the Federal Government. As the Associate Solicitor for the Division of General Law at the Department of the Interior from 1993 to 1995, my client was the Department of the Interior. As the United States Attorney from 1998 to 2001, my clients were the United States and the District of Columbia. As a partner in private practice at Crowell & Moring LLP from 2001 to 2007, my clients were individuals, corporations, government entities, private companies, non-profit organizations, and educational institutions. Finally, as the Managing Associate General Counsel for Litigation at the Federal Home Loan Mortgage Corporation (Freddie Mac") from 2007 to 2008, my client was Freddie Mac.

I have been a general litigator throughout my legal career, focusing on the development of litigation skills and the ability to quickly master complex facts, while becoming proficient in the particular substantive legal area(s) presented. I have served as lead counsel in cases involving a variety of substantive areas, including equal employment opportunity (individual and class actions), tort, contract (government, commercial and employment), Administrative Procedure Act, Freedom of Information Act, Privacy Act, antitrust and intellectual property. At other times I have supervised or otherwise participated substantially in major decision-making in both civil and criminal matters.

In addition to my focus on general litigation, I developed a particular expertise in the law of employment discrimination, including major class actions, during my tenure as an Assistant United States Attorney from 1986 to 1993.

Finally, while at Crowell & Moring LLP, I also conducted internal investigations. This focus was fueled by my experience as an Inspector General and as United States Attorney.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I estimate that over 90% of my practice has been in litigation. The frequency of my appearances in court has varied depending on the position in which I was serving at the time. From October 1981 to January 1986 while serving as an Associate at the law firm of Steptoe & Johnson LLP, I did not appear in court. As a staff Assistant United States Attorney in the Civil Division of the United States Attorney's Office for the District of Columbia from February 1986 to October

1989, I appeared in court frequently. From October 1989 to August 1993 while serving in the supervisory positions of Assistant Chief and Deputy Chief of the Civil Division, I appeared in court occasionally - principally in connection with significant matters. For the period September 1993 to April 2001 when I served as the Associate Solicitor for the Division of General Law at the United States Department of the Interior (September 1993 to April 1995), the Inspector General at the Department of the Interior (April 1995 to January 1998) and the United States Attorney for the District of Columbia (January 1998 to April 2001), I did not appear in court. As a partner with the law firm of Crowell & Moring LLP from June 2001 to September 2007, I appeared in court occasionally. As the Managing Associate General Counsel for Litigation at the Federal Home Loan Mortgage Corporation ("Freddie Mac") from October 2007 to December 2008, I did not appear in court. I also have not appeared in court from July 2009 to the present while serving as Senior Advisor to the Secretary of the Interior (July to August 2009) and Assistant Secretary for Land and Minerals Management (August 2009 to present).

i. Indicate the percentage of your practice in: **

1. federal courts: approx. 98% approx. 2%

2. state courts of record:

3. other courts:

4. administrative agencies:

ii. Indicate the percentage of your practice in: **

1. civil proceedings: approx. 98% 2. criminal proceedings: approx, 2%

- ** I have interpreted these questions as referring to cases personally handled. Thus, I have not included criminal cases in which I became involved as United States Attorney, criminal investigations which I oversaw as Inspector General, or the fact that a large portion of the U.S. Attorney's Office practice is in a state court of record.
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate

I have tried ten cases, all of which were civil matters in the United States District Court for the District of Columbia. In nine of those cases, I was the sole counsel of record, with counsel from the defendant Federal agency serving in an "Of Counsel" capacity. I served as chief counsel in the tenth case, which I co-tried with a more junior Assistant United States Attorney.

i. What percentage of these trials were:

1. jury:

10%

2. non-jury:

90%

e. Describe your practice, if any, before the Supreme Court of the United States, Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

- 17. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
 - a. the date of representation;
 - the name of the court and the name of the judge or judges before whom the case was litigated; and
 - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
 - 1) United States v. SBC Commc'ns, Inc., 489 F. Supp. 2d I (D.D.C. 2007).

Dates of Representation: 2006-2007

Parties Represented: SBC Communications and AT&T Corporation

Judge: The Honorable Emmet Sullivan

Co-Counsel:

William Randolph Smith, Esq. Crowell & Moring LLP 1001 Pennsylvania Avenue, NW Washington, DC 20004

(202) 624-2700

Counsel for the

Claude F. Scott, Jr., Esq.

Department of Justice:

United States Department of Justice 450 Fifth Street, NW, Suite 4100

Washington, DC 20530

(202) 353-0378

Summary: This case involved the first application of the Tunney Act (Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b)-(h)) in a contested proceeding following Congress' amendment of the Act in 2004 to strengthen the court's role in reviewing antitrust consent decrees proposed by the Department of Justice. Following the announced merger of SBC and AT&T (as well as Verizon and MCD, a determination by the Department of Justice that the merger would violate the antitrust laws (Section 7 of the Clayton Antitrust Act, 15 U.S.C. section 18), and an agreement by the Department of Justice and the merging parties regarding divestitures that would take place to address the alleged violations, the Department of Justice sought a ruling from the Court that the proposed final judgments were "in the public interest." Such a ruling was strongly opposed on various grounds by several amici curiae. The Court conducted a searching inquiry of the legislative history of the 2004 amendments, developed a comprehensive record, and engaged in a thorough review of the issues presented. These issues included the proper standard of review, the authority of the Court to inquire into matters outside the complaint as drafted by the Department of Justice, and the amount of deference to be accorded the Government's assessment of the adequacy of the proposed settlements.

Result: The Court concluded that the scope of its review was "sharply proscribed"; that it did not have carte blanche to reach beyond the Government's complaint; and that the Government needed to establish only a factual basis for its conclusion that the settlements are reasonably adequate remedies for the alleged harms. Based on these principles, the Court ruled in favor of the Government and the merging parties, finding that entry of the proposed final judgments was in the public interest.

Role: I served as co-lead counsel for SBC and AT&T in the Tunney Act proceedings. Because I was not involved in the underlying merger transaction, I was required to quickly become familiar with the telecommunications issues presented. In addition, because this was a case of first impression in view of the 2004 amendments to the Tunney Act, it required detailed research and sophisticated analysis. I participated actively in preparing the filings submitted to the Court on behalf of SBC and AT&T, and presented all of the oral arguments on behalf of these parties at the hearings.

 Thompson v. U.S. Department of Housing & Urban Development, 404 F.3d 821 (4th Cir. 2005).

Dates of Representation: 2004 - 2005

Party Represented: Plaintiff-Appellee Thompson et al.

Judges: The Honorable William Walter Wilkins The Honorable M. Blane Michael The Honorable William Byrd Traxler, Jr.

Co-Counsel:

David L. Haga, Esq.

(formerly with Crowell & Moring LLP)

Assistant General Counsel

Verizon

1320 North Courthouse Road Arlington, Virginia 22201

(703) 351-3065

Andrew D. Freeman, Esq. Brown, Goldstein & Levy LLP 120 East Baltimore Street, Suite 1700

Baltimore, Maryland 21202 (410) 962-1030, ext. 1313

Opposing Counsel:

HUD appealed.

Thomas Mark Bondy, Esq. United States Department of Justice Civil Division, Appellate Section 601 D Street, NW, Room 9548

Washington, DC 20530 (202) 514-4825

Summary: A group of African-American residents of public housing brought a class action lawsuit against the Department of Housing and Urban Development (HUD), the Housing Authority of Baltimore city, and Baltimore city officials alleging racial segregation and discrimination in Baltimore's public housing system. The parties settled some of the claims, memorializing their agreement in a Partial Consent Decree that imposed numerous obligations on the local defendants and HUD. With the end of the Court's jurisdiction over HUD approaching and in the face of the failure of the local defendants to fulfill their obligations under the Consent Decree, the residents moved to modify the Decree to extend the period that the Court would exercise jurisdiction over HUD. The District Court (Garbis, J.) granted the motion, extending its jurisdiction over HUD until the agency demonstrated that its obligations were fulfilled approximately to the same extent as was reasonably contemplated by the

Result: On appeal, the Fourth Circuit affirmed, concluding that: (1) the District Court did not abuse its discretion in concluding that there were significantly changed circumstances warranting modification of the Consent Decree; (2) the absence of fault by HUD did not preclude modification of HUD's obligations under the Decree; and (3) the modification was suitably tailored to address the changed circumstances.

original timeframe of the Court's jurisdiction over the agency (2004 WL 1058100).

Role: I served as lead counsel when this matter was on appeal. In this capacity, I participated in drafting and finalizing the appellate brief, and argued the case before the Fourth Circuit.

3) Hyatt v. Dudas, 2005 WL 5569663 (D.D.C. 2005), on reconsideration, 2006 WL 4606037 (D.D.C. 2006).

Dates of Representation: 2003 - 2005

Party Represented: Gilbert P. Hyatt

Judge: The Honorable Henry Kennedy, Jr.

Co-Counsel: Michael I. Coe, Esq.

(formerly with Crowell & Moring LLP, now deceased)

Opposing Counsel: Rhonda C. Fields, Esq.

Assistant United States Attorney United States Attorney's Office 555 Fourth Street, NW Washington, DC 20001 (202) 514-6970

Summary: This case is one of several matters in which I served as lead counsel for the plaintiff in his challenges to the United States Patent and Trademark Office's (PTO) rejection of his patent applications. The complexity of the issues presented stemmed in large part from the unique nature of the proceedings when challenges to rulings by the PTO are brought, as here, in the United States District Court for the District of Columbia pursuant to 35 U.S.C. section 145 where new evidence can be introduced, rather than via the more traditional avenue of appeal to the Federal Circuit, under 35 U.S.C. section 141, where review is on the administrative record. The plaintiff here sought to introduce additional evidence in the form of his declaration. The absence of clear precedent under section 145 required extensive research and detailed analysis to resolve threshold issues, including the proper standard of review and the extent to which additional evidence can be introduced in a section 145 case.

Result: Agreeing with plaintiff Hyatt, the Court concluded that if the patent applicant introduces additional evidence in a section 145 case that conflicts with the PTO's findings, the PTO's fact-findings are reviewed de novo, rather than under the deferential "substantial evidence" standard. The Court also agreed with Hyatt that his declaration (a declaration from the inventor) could constitute such additional evidence. The Court concluded, however, that Hyatt could not adequately explain why the additional evidence was not presented to the PTO during the administrative proceedings; therefore, plaintiff's declaration was not considered by the Court. Evaluating plaintiff's challenges to the PTO's ruling under the more deferential "substantial evidence" standard, the Court found in favor of the PTO and granted its motion for summary judgment.

Role: As lead counsel for the plaintiff, I was actively involved in the extensive briefing in this case, in coordination with co-counsel and another lawyer who served in an "Of Counsel" capacity.

Tarpeh-Doe v. United States, 712 F. Supp. 1 (D.D.C. 1989), rev'd, 904 F.2d 719 (D.C. Cir. 1990).

Dates of Representation: 1988 - 1990

Agency Represented: Department of State

Judges: The Honorable Patricia Wald The Honorable Abner Mikva The Honorable James Buckley

Opposing Counsel: Joseph Michael Hannon, Jr., Esq.

Hannon Law Group, LLP 1901 18th Street, NW Washington, DC 20009

(202) 232-1907

Summary: Plaintiffs sought to recover damages under the Federal Tort Claims Act for neurological injury suffered by the minor plaintiff, allegedly due to negligent medical care received in Liberia, where the minor's mother was assigned as an employee of the Agency for International Development. This appeal presented the question whether the Secretary of State's discretionary authority to pay tort claims that arise in a foreign country in connection with State Department operations abroad created constitutionally protected interests that required the incorporation of procedural due process protection in the administrative adjudication of a tort claim. Based on the conclusion that the applicable statutes and implementing regulations entitled a claimant to the traditional safeguards of due process, the District Court (Oberdorfer, J.) ordered the defendant agency to reconsider plaintiffs' administrative tort claim utilizing a procedure that: disclosed the evidence relied upon in adjudicating the claim; afforded plaintiffs an opportunity to respond; and included findings of fact by the decision maker in connection with the final resolution of the claim.

<u>Result</u>: The District of Columbia Circuit reversed, concluding that the applicable statutes and regulations did not create constitutionally protected interests that justified the imposition of the additional procedures ordered by the District Court.

Role: As counsel of record, I was responsible for briefing and arguing this matter in both the District Court and the Court of Appeals. In addition to the due process issue raised on appeal, briefing in the District Court included the government's successful motion to dismiss two counts of the complaint alleging Negligence/Breach of Contract and Breach of Warranty on the ground that those counts charged tortious

conduct outside of the United States, and thus were barred under the foreign country exception to the Federal Tort Claims Act. Counsel from the defendant agency served in an "Of Counsel" capacity.

 Arnold v. United States Postal Service, 667 F. Supp. 6 (D.D.C. 1987), rev'd, 863 F.2d 994 (D.C. Cir. 1988).

Dates of Representation: 1987 - 1988

Agency Represented: United States Postal Service

Judges: The Honorable James Buckley

The Honorable Douglas H. Ginsburg

The Honorable Leonard I. Garth (U.S. Senior Circuit Judge for the Third Circuit sitting by designation pursuant to 28 U.S.C. section 294(d))

Opposing Counsel: Joseph E. Kolick, Jr., Esq.

Dickstein, Shapiro, Morin & Oshinsky

1825 Eye Street, NW Washington, DC 20006

(202) 420-2253

Summary: A class of postal inspectors mounted a successful challenge in the District Court (Richey, J.) to the senior-first directed transfer component of the Postal Inspection Service's Career Path Policy on the ground that it discriminated on the basis of age under both disparate impact and disparate treatment theories. The senior-first component – by which the most senior level 23 postal inspectors, in terms of service, were selected for mandatory reassignment – was the third prong of a three-part policy designed to ensure that all level 23 postal inspectors spent five years in a major metropolitan area during their service. The senior-first option was used only in the absence of a sufficient number of level 23 volunteers or bids for promotion by level 21 inspectors.

Result: On appeal, the District of Columbia Circuit reversed. Assuming, without deciding, that disparate impact theory applied to age discrimination cases, the Court of Appeals concluded that the District Court erred in failing to consider the impact of the senior-first component in the context of the Career Path Policy as a whole, including its voluntary components. When so considered, the Court of Appeals concluded that the plaintiffs had failed to establish discrimination under either disparate impact or disparate treatment theories.

Role: I was assigned to this matter as counsel of record following the District Court's adverse decision. Accordingly, I was responsible for briefing and arguing the case in the Court of Appeals. Assistance was provided by counsel from the defendant agency, who served in an "Of Counsel" capacity.

6) Mac'Avoy v. The Smithsonian Institution, 757 F. Supp. 60 (D.D.C. 1991).

Dates of Representation: 1989 - 1991

Agency Represented: The Smithsonian Institution

Judge: The Honorable Thomas F. Hogan

Opposing Counsel: Thomas R. Kline, Esq.

Andrews & Kurth, LLP 1350 I Street, NW, Suite 1100 Washington, DC 20005 (202) 662-2739

Summary: The plaintiff claimed that a collection of artwork that was given by the artist as gifts to the Smithsonian Institution in the late 1960's was in fact only a loan, and that he was the true owner of the artwork. The donor, a United States citizen who spent most of her life in France, had died in the early 1970's. Claiming ownership pursuant to an Act of Sale and under various theories, including bailment, replevin, Fifth Amendment due process, Fifth Amendment takings, the Administrative Procedure Act (APA) and French property law, the plaintiff sought return of the artwork, nominal damages and attorney's fees and costs.

Result: The District Court granted the government's motion to dismiss or for summary judgment, finding that no bailment contract was created; the replevin claim sounded in tort, and thus was barred by the plaintiff's failure to file a timely administrative claim under the Federal Tort Claims Act; plaintiff failed to state a Fifth Amendment due process or takings claim; plaintiff lacked standing to state a claim under the APA; and plaintiff failed to establish a property right under French law.

Role: As counsel of record, I was responsible for all aspects of the case, with assistance provided by counsel from the defendant agency serving in an "Of Counsel" capacity. The case involved extensive discovery in both the United States and France. In addition, it raised challenging choice of law issues and complex questions of French law, which required retention of, and work with, experts in French law. Finally, the multiplicity of plaintiff's claims necessitated extensive research, analysis and briefing.

7) Lewis v. Brady, 54 FEP Cases 861 (D.D.C. 1990).

Dates of Representation: 1989 - 1990

Agency Represented: Bureau of Engraving & Printing, Department of the Treasury

Judge: The Honorable Thomas F. Hogan

Co-Counsel: Richard N. Reback, Esq.

(former Assistant United States Attorney) General Counsel to the Inspector General United States Department of Homeland Security

Office of Inspector General

245 Murray Drive, SW, Building 410

Washington, DC 20528 (202) 282-8000

Opposing Counsel:

David Donovan, Esq.

(formerly with Wilmer, Cutler & Pickering, now

WilmerHale)

General Counsel, Washington Redskins

21300 Redskin Park Drive Ashburn, Virginia 20147

(703) 726-700

Michael Stevenson, Esq.

(formerly with Wilmer, Cutler & Pickering, now

WilmerHale; current address unknown)

Opposing Counsel:

Joseph Sellers, Esq.

(formerly with Washington Lawyers' Committee for Civil

Rights and Urban Affairs)

Cohen Milstein 1666 K Street, NW Washington, DC 20006

(202) 408-4600

Summary: A group of African-American non-craft employees at the Bureau of Engraving & Printing brought a class action lawsuit under Title VII of the Civil Rights Act of 1964 challenging virtually every aspect of the Bureau's hiring and promotion into the craft ranks in the plateprinting, bookbinding and press crafts on grounds of alleged discrimination. Among other claims, the plaintiffs challenged the need for, length of, and testing requirements for entry into apprenticeship programs; journeyman hires; the classification of various positions as craft or non-craft; and the titling of certain positions as bookbinder positions. Plaintiffs also brought into question the knowledge, skills and abilities of employees in craft positions as compared with those in non-craft positions. Plaintiffs sought millions of dollars in back pay, injunctive, and other relief.

Result: On the first morning of what was expected to be a six to eight week trial, the case settled for \$1.4 million in back pay and other relief.

Role: I was assigned to this case approximately six months prior to the trial date. As co-counsel, I was actively involved with all aspects of the pre-trial proceedings and

trial preparation. This work included extensive discovery; identification, retention, consultation with, and preparation of eight expert witnesses; numerous written submissions to the Court on discovery disputes and pretrial matters, including a partially successful motion regarding class certification and successful oppositions to a lengthy motion in limine and a detailed motion for partial summary judgment; oral arguments on a variety of discovery and pretrial matters; case development; and trial preparation. Together with my co-counsel, and with counsel from the defendant agency serving in an "Of Counsel" capacity, we developed virtually all aspects of this case in six months. I was also actively involved in settlement negotiations associated with committing to writing the terms of an agreement in principle.

8) Alamo Aircraft Supply, Inc. v. Carlucci, 698 F. Supp. 8 (D.D.C. 1988).

Dates of Representation: 1988 - 1989

Agency Represented: Department of Defense

Judge: The Honorable Harold H. Greene

Opposing Counsel: James M. McHale, Esq.

(formerly with Seyfarth, Shaw, Fairweather & Geraldson)

Special Counsel

Securities and Exchange Commission

100 F Street, NE Washington, DC 20549 (202) 551-6000

Summary: The plaintiffs sought a temporary restraining order and a preliminary injunction when they were suspended from government contracting by the Department of the Army based on the firm's indictment by a Federal grand jury for bidrigging and mail fraud. Plaintiffs claimed they could not be suspended in advance of a suppression hearing under Title III in which they would have the opportunity to test the legality of the wiretap evidence that allegedly provided the basis for the indictment. The District Court granted plaintiffs' motions for a temporary restraining order and a preliminary injunction. In so ruling, the Court rejected the government's argument that, in suspending the contractor, the defendant was entitled to rely on the existence of the indictment in order to immediately protect the government's interests against potentially unscrupulous contractors, without going behind the face of the indictment to examine the underlying evidence and probe the grand jury's reasons for issuing the indictment. The government's motion for stay pending appeal was also denied by the District Court.

Result: On appeal, the District of Columbia Circuit concluded that a serious legal question had been presented that could result in the government prevailing on appeal, and granted a stay of the preliminary injunction pending appeal. (No. 88-5309 (Oct. 13, 1988; Nov. 2, 1988)). After the firm's suspension from government contracting

was lifted by the Agency based on the impending dismissal of the indictment, the government successfully moved in the Court of Appeals for dismissal of the appeal on grounds of mootness, and for an order vacating the District Court's adverse decision.

Role: As counsel of record, I was responsible for briefing and arguing this matter in the District Court and for the briefing in the Court of Appeals. Counsel from the defendant agency served in an "Of Counsel" capacity.

9) Odoms v. Espy, No. 90-1469 (D.D.C. 1993).

Dates of Representation: 1992 - 1993

Agency Represented: Department of Agriculture

Judge: The Honorable June L. Green

Co-Counsel: Stacy M. Ludwig, Esq.

(former Assistant United States Attorney)

Deputy Director, Professional Responsibility Advisory

Office

United States Department of Justice 950 Pennsylvania Avenue, NW

Washington, DC (202) 514-2000

Opposing Counsel: Gary T. Brown, Esq.

Gary T. Brown & Associates 1050 17th Street, NW, Suite 1000

Washington, DC 20036

(202) 393-4900

Summary: This was the first employment discrimination jury trial against the Federal Government in the District of Columbia. Plaintiff claimed that he was discriminated against on the basis of race under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 (Title VII), when his job as a safety officer was classified at the GS-11 grade level rather than at a higher grade; his ability to perform his job was impeded; and he received lower performance ratings than warranted. Among other things, the plaintiff sought compensatory damages for the physical ailments, emotional pain, suffering and mental anguish that he claimed to have suffered as a result of the alleged discrimination.

Result: The jury returned a verdict for the Government on the issues regarding position classification and performance ratings. The jury hung (7-1 in favor of the Government) on the issue regarding impeding of job performance.

Role: I was assigned to this case during the discovery phase and served as lead counsel, co-trying the case with a more junior Assistant United States Attorney. The Court ruled approximately two weeks before trial that the Civil Rights Act of 1991 applied retroactively to this case, thus rendering the compensatory damages and jury trial provisions of the new law applicable to the pending case. Because the Court's ruling was rendered so close to the trial date, and there was little by way of precedent or sample documents upon which to rely, the final preparation and trial of the case required considerable effort to bring it to a successful conclusion.

10) Noble v. Herrington, No. 85-1507, slip op. (D.D.C. Feb. 16, 1988).

Dates of Representation: 1986 - 1988

Agency Represented: Department of Energy

Judge: The Honorable Charles R. Richey

Opposing Counsel: Christopher T. Lutz, Esq.

Steptoe & Johnson, LLP 1330 Connecticut Ave., NW Washington, DC 20036

(202) 429-3000

Summary: Plaintiff claimed that she was discriminated against on the basis of sex in violation of Title VII of the Civil Rights Act of 1964 when she was denied a promotion to the GS-14 level, and that she was constructively discharged as a result of an alleged progressive campaign of harassment and hostility waged by her fellow employees and participated in, or sanctioned by, her supervisors. The case also presented the question whether the plaintiff was entitled to seek enforcement of a favorable Equal Employment Opportunity Commission (EEOC) ruling on her claim of reprisal and at the same time to present additional evidence of alleged acts of reprisal at trial that were rejected at the administrative level.

Result: Following a week-long trial, the Court entered judgment in favor of the Government on plaintiff's sex discrimination and constructive discharge claims. The Court also granted plaintiff's motion for partial summary judgment to enforce the EEOC's ruling on the reprisal claim and awarded appropriate relief, but did not permit plaintiff to introduce any further evidence of reprisal at trial.

Role: I was counsel of record with responsibility for all aspects of the case, which included extensive discovery, expert witness preparation and testimony, and considerable pre-and post-trial filings. Assistance was provided by counsel from the defendant agency, who served in an "Of Counsel" capacity.

18. <u>Legal Activities</u>: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not

involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to handling cases, I have had the privilege of participating in a number of significant legal activities during my professional career. Among them are the following:

1. As the United States Attorney for the District of Columbia from 1998 to 2001, I led the largest United States Attorney's Office in the country with the unique responsibility of serving as both federal and local prosecutor. During my tenure, I spearheaded and oversaw the implementation of several major law enforcement initiatives designed to address various issues of concern in the District of Columbia. The following are illustrative.

Community Prosecution: The city-wide expansion of the Fifth District Community Prosecution (CP) pilot project paired prosecutors and community outreach specialists with geographically assigned areas of the city in all seven police districts. The expansion of CP resulted in enhanced interaction with the community, an increased flow of information, and an establishment of partnerships for better neighborhoods, all of which coincided with a significant reduction in crime.

Gang Prosecution & Intelligence Section: This section was created to more effectively address the problems associated with gang violence in the District of Columbia. Between the spring of 1999 and April 2001, the United States Attorney's Office indicted or tried to a successful conclusion five major gangs. The gang investigations resulted in the conviction of 90 defendants, the indictment of 88 additional defendants, and the seizure of 175 firearms.

<u>Public Corruption</u>: Under my leadership, the United States Attorney's Office increased its focus on public corruption cases, recognizing a need to ensure the community that those who violate the public trust would be investigated and held accountable. From 1998 to 2000, the number of public corruption investigations and convictions increased dramatically.

Conditions of Release Enforcement (CORE) Program: This program was designed to address the "revolving door" syndrome, where some defendants on pretrial release would violate their court-ordered conditions of release, and continue to victimize individuals and neighborhoods. The CORE program focused on more aggressively pursuing and prosecuting these defendants on charges of criminal contempt. In certain neighborhoods, there was a decline in the quality-of-life offenses that had routinely been committed by repeat offenders on pre-trial release.

Youth Crime Prevention Programs: Under my leadership, the United States Attorney's Office created new mentoring, tutoring and crime prevention programs for youth. We

developed a Drug Education for Youth summer camp and year-long mentoring program. We also developed an anti-violence program, which was presented in schools throughout the District of Columbia by members of the United States Attorney's Office and representatives from the Metropolitan Police Department and the Bureau of Alcohol, Tobacco and Firearms. Finally, we initiated Project LEAD (Legal Enrichment and Decision-making) in various schools throughout the city, where Assistant United States Attorneys presented an interactive curriculum that helped children develop the knowledge, skills, understanding and values to realize the promise of their potential.

Legislative Efforts: I created a new senior level position within the immediate office of the United States Attorney that was dedicated to legislative efforts and designed to help the Office assume a more proactive role in contributing to the law enforcement legislative agenda in the District of Columbia. As a result of this initiative, we developed, submitted to the Council of the District of Columbia and offered testimony regarding legislative proposals that resulted in the Bail Reform Amendment Act of 2000 and the Distribution of Marijuana Amendment Act of 2000, while providing valuable input on other pieces of legislation.

- 2. In 2002, I was appointed by the Board of Governors of the District of Columbia Bar to a six-year term as a member of the District of Columbia Judicial Nomination Commission. The Commission is charged with recommending to the President of the United States three candidates to fill each judicial vacancy on the Superior Court of the District of Columbia and the District of Columbia Court of Appeals, and with selecting the Chief Judges of the Superior Court and the Court of Appeals. During my tenure, I participated in filling 14 vacancies on the Superior Court and four vacancies on the Court of Appeals, and selecting two Chief Judges for the Court of Appeals and one for the Superior Court. These activities included reviewing applications, interviews with applicants, and Commission deliberations and decision-making.
- 3. From 1993 to 1997 and 2002 to the present, I have served on the Advisory Committee on Local Rules for the United States District Court for the District of Columbia. The Committee drafts and makes recommendations to the Court regarding local rules to augment the Federal Rules of Civil and Criminal Procedure and govern practice in the United States District Court for the District of Columbia.
- 4. In 2004, I was nominated by Mayor Anthony Williams and confirmed by the Council of the District of Columbia to serve on the District of Columbia Board of Elections and Ethics. I was also appointed by Mayor Williams to serve as Chairman of the Board. The three-member Board oversees an independent agency of the District of Columbia Government that is responsible for the administration of elections, ballot access, voter registration and related matters. Through the Office of Campaign Finance, the Board is also charged with administering and enforcing District of Columbia laws, rules and regulations pertaining to campaign finance, lobbying, conflict of interest and the ethical conduct of public officials.

I chaired the Board's monthly public meetings, special meetings, and hearings on matters that fell within the Board's jurisdiction. I also actively participated in the deliberations of the Board and the preparation of written orders and opinions that memorialized the decisions made. One of the most significant cases during my tenure was the challenge, on grounds of widespread fraud and other irregularities, to the signature-gathering process associated with the petition to place on the ballot the issue regarding the installation of video lottery terminals in the District of Columbia. Following nine days of hearings and the rejection of several thousand signatures on grounds of forgery, fraud and other election law violations, the Board concluded that there was an insufficient number of legitimate signatures for the video lottery terminal initiative to qualify for the ballot. The District of Columbia Court of Appeals affirmed the Board's ruling. (Citizens Comm. for the D.C. Video Lottery Terminal Initiative v. D.C. Bd. of Elections and Ethics, 860 A.2d 813 (D.C. 2004)).

5. For much of my professional career, I have mentored or otherwise shared my experiences with junior or less experienced attorneys, individuals aspiring to be attorneys and others. These professional development activities have involved one-on-one interactions, participation in group-sponsored networking events, and participation as a panelist or guest speaker in many programs. My activities have included participation in: programs at law schools, including Harvard, Howard, George Washington, Georgetown and the University of the District of Columbia; programs sponsored by Bar Associations, including the Women's Bar Association and the Greater Washington Area Chapter Women Lawyers Division of the National Bar Association; programs geared toward young professionals such as the Institute for Caribbean Studies Young Professionals Initiative; and programs geared toward aspiring and young attorneys, including the Crowell & Moring Summer Associate Luncheon Program, the Law Clerk Speakers Program at the United States Courthouse in the District of Columbia, and a session with Supreme Court Judicial Fellows and Interns. I have also engaged with our youth, including through programs such as Law Day activities and other visits to schools; participation in the United States Attorney's Office Drug Education for Youth program; participation in the National Youth Leadership Forum on Law program; sharing experiences with Girl Scouts; and providing remarks at a Virgin Islands High School Appellate Moot Court competition.

I have not performed any lobbying activities on behalf of any clients or organizations.

19. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

From 1993 to 2006, I assisted in teaching a trial advocacy course during the fall semester as an adjunct faculty member at The George Washington University Law School. Each semester, I was responsible for teaching the fundamentals of trial practice to a break-out group of approximately eight to twelve students who prepared and presented assignments designed to familiarize them with trial preparation and presentation techniques. The

participatory format of the break-out sessions enabled the students to receive individualized instruction and constructive critiques of their performance throughout the semester. At the conclusion of the course, the students participated in mock trials. Copy of a sample syllabus supplied.

20. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not have any deferred income or future benefit arrangements arising from any prior business relationships.

21. <u>Outside Commitments During Court Service</u>: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any current plans, commitments, or agreements to pursue outside employment during my service with the court.

22. Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. <u>Statement of Net Worth</u>: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

There are no potential conflicts of interest of which I am aware that are likely to arise if I am confirmed as a judge for the District of the Virgin Islands. If any such potential conflicts were to arise, I would seek to avoid not only an actual conflict of interest, but the appearance of such a conflict. With this goal in mind,

I would review carefully the Code of Conduct for United States Judges together with any other relevant Canons, statutory provisions and applicable guidance. In addition, I would consult with the Chief Judge, other experienced jurists, and available ethics personnel. I would apply the applicable rules scrupulously and err on the side of caution in instances of doubt.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In determining whether there is a potential conflict of interest and resolving any such conflict, I would review carefully the Code of Conduct for United States Judges together with any other relevant Canons, statutory provisions and applicable guidance. In addition, I would consult with the Chief Judge, other experienced jurists, and available ethics personnel. I would apply the applicable rules scrupulously and err on the side of caution in instances of doubt. If any potential conflicts arise, I would always seek to avoid not only an actual conflict of interest, but the appearance of such a conflict.

25. <u>Pro Bono Work</u>: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My pro bono efforts have taken several forms. First, I have done legal work on pro bono matters. This work has ranged from matters such as my Fourth Circuit briefing and argument in Thompson v. U.S. Department of Housing & Urban Development, 404 F.3d 821 (4th Cir. 2005), in which the Fourth Circuit affirmed the District Court's extension of the Court's jurisdiction over HUD under a Partial Consent Decree entered in a public housing discrimination case, to work on a class action accommodations discrimination case involving a commercial establishment, to work involving a negotiated resolution with a business manager regarding the dismissal of a teenage employee, as well as other matters.

Second, all of my service on Boards of Directors has been without compensation. This has included service on boards such as that of the Washington Lawyers' Committee for Civil Rights and Urban Affairs (seven years), which solicits assistance from, and works with, law firms in providing *pro bono* legal representation in civil rights cases; the High Tea Society (four years), which exposes underprivileged pre-teen and teenage girls to educational, social, cultural and other developmental opportunities; and the Washington Area Tennis Patrons Foundation (two years), which sought to increase and improve tennis opportunities for youth in the District of Columbia metropolitan area.

Third, I have assisted legal services programs in their fundraising efforts. In 2003, 2004 and 2005, I served as Co-Chair of the Whitman-Walker Clinic Legal Services' annual "Going the Extra Mile" fundraising campaign. In addition, in 2003, I served as the

Honorary Chair of the Legal Aid Associates Campaign, with the key speaking role at the Campaign's kick-off reception.

Finally, I have also had opportunities to engage with our youth including through programs such as Law Day activities and other visits to schools, and participation in the United States Attorney's Office Drug Education for Youth program.

26. Selection Process:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

After learning of an impending vacancy on the Federal bench in the Virgin Islands, I expressed my interest in being considered for the position to the Delegate to Congress from the Virgin Islands, The Honorable Donna Christensen, and forwarded a copy of my resume to her in or about May 2008. I subsequently learned that the Virgin Islands Bar Association had formed an ad hoc Judicial Nominating Committee to consider applicants for the judicial position and make recommendations to the Virgin Islands Delegate to Congress. In September and October 2008, I submitted the requested application materials to the Judicial Nominating Committee, and was interviewed by the Committee in December 2008. By letter dated December 30, 2008, the then-President of the Virgin Islands Bar Association informed Congresswornan Christensen that the Judicial Nominating Committee had issued its report and recommended me to fill the judicial vacancy. In or around the first quarter of 2009, I received a telephone call from, and had a conversation with, Congresswornan Christensen about my candidacy for the judicial position.

On or about September 29, 2010, I learned from Congresswoman Christensen that she was supporting my nomination for the judicial position. Since October 12, 2010, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed with attorneys from the White House Counsel's Office and the Department of Justice on January 13, 2011. The President submitted my nomination to the Senate on March 2, 2011.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or

implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

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FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Lowfs, Wilma A.	Baze of Report 83/04/20) i
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FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Petron Reporting Levils, Wilting A.	Date of Report 03/04/2011
V. GIFTS, (Includes those to apouse and dependent children; sea 9)	2. 18-31 of filing matterilors.)	
NONE (No reportable gifts.)		
SOURCE	DESCRIPTION	VALUE
i. EXEMPT		
2.		
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5.	The state of the s	
VI. LIABILITIES, (Includes those of spaces and dependent	chDéreo; see pp. 37-33 of fillog Instructions.)	
NONE (No reportable liabilities.)		
CREDITOR	DESCRIPTION	VALUE CODE
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3.		
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FINANCIAL DISCLOSURE R	EPOF	er F	lame of Perso	n Reporting					Date of Report
age 4 of 6			Lewis, Wila	ы А.					63/04/2011
II. INVESTMENTS and TRU NONE (No reportable income, as			ms.)		१६ ल् कालाव साम	lependent ch	ildreny sa	pp. 34-60	of filing instructions.)
A. Description of Assets (including entit assets)	B. one during ning period	Grous va	C. Not at crid ing period	D. Transactions during reposing period					
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code I (A-H)	(2) Type (e.g., div, cest arist.)	(1) Value Code 2 : (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, restamption)	(2) Date mm/dd/yy	Cade 2	(4) Gain Code ((A-H)	(5) Identity of buyerhelier (if private trantaction)
Wachovia Bank accounts	^	Interest	м	۲	Exempt	1			····
USPS Federal Credit Union IRA cash account	A	Dividend	,	т					
PIMCO Total Return Insti Fund	Ε	int/Div.	N	Т					
CNI Charter Prime Money Market Fund ~ Inst.	Α	Dividend	,	т					
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FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	· · Date of Report
Page 5 of 6	Lewis, Wilma A.	03/04/2011

VIIL ADDITIONAL INFORMATION OR EXPLANATIONS. (Indicate part of Report)

FINANCIAL DISCLOSURE REPORT	Nume of Person Reporting	Date of Report
Page 6 of 6	Lewis, Wilma A.	03/04/2011

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my apouse and minor or dependent children, if any) is accomplete to the best of my knowledge and belief, and that my information not reported was withheld because it met applicable statutary providious pertaining non-disclosure.

I further certify that carned focome from outside employment and honoraria and the acceptance of pilts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 st. seq., 5 U.S.C. § 7553, and Judicial Conference regulations.

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILIFULLY PALSIFIES OR FAILS TO FILE THIS EPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. 1971- § 144)

elus

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20344

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES	LIABILITIES				
Cash on hend and in banks	on hend and in banks 142 629		Notes payable to banks-secured		18	897		
U.S. Government securities				Notes payable to banks-unsecured				
Listed securities				Notes payable to relatives				
Unlisted securities				Notes payable to others				
Accounts and notes receivable:				Accounts and bills due				
Due from relatives and friends				Unpaid income tax				
Due from others				Other unpaid income and interest				
Doubtful				Real estate mortgages payable - see schedule		829	591	
Real estate owned-add schedule	1	936	610	Chattel mortgages and other liens payable				
Real estate mortgages receivable				Other dehts-itemize:				
Autos and other personal property		220	000					
Cash value-life insurance		310	000					
Other assets itemize:								
- Retirament holdings		638	360					
				Total liabilities		848	488	
				Net Worth	2	399	111	
Total Assets	3	247	599	Total liabilities and net worth	3	247	599	
CONTINGENT LIABILITIES				GENERAL INFORMATION				
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No			
On leases or contracts	Are you defendant in any suits or legal actions? *Official-capacity suits only Yes*							
Legal Claims				Have you ever taken bankruptcy?	No			
Provision for Federal Income Tax								
Other special debt								

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence #1	\$ 501,390
Personal residence #2	1,435,220
Total Real Estate Owned	\$ 1,936,610
Retirement Holdings	
Thrift Savings Plan	\$ 241,017
USPS Federal Credit Union IRA	11,765
PIMCO Total Return Instl Fund	364,285
CNI Charter Prime Money Market Fund -Inst.	13,533
Vanguard Prime Money Market Fund -Inst.	7,760
Total Retirement Holdings	\$ 638,360
Real Estate Mortgages Payable Personal residence #2	ድ የ ግቢ ናልነ
	\$ 829,591
Total Real Estate Mortgages Payable	\$ 829,591

1107

AFFIDAVIT

I, <u>Wilma Antoinette Lewis</u>, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

(NOTARY)

(NAME)

District of Columbia: SS

Subscribed and sworm to before ma, in my presence,

STATEMENT OF MAJOR GENERAL MARILYN A. QUAGLIOTTI, USA (Ret.], NOMINEE TO BE DEPUTY DIRECTOR FOR SUPPLY REDUCTION, OFFICE OF NATIONAL DRUG CONTROL POLICY

Major QUAGLIOTTI. Thank you, Senator and Ranking Member Grassley. It's an honor to be here today as President Obama's nominee for Deputy Director for supply reduction at the Office of National Drug Control Policy.

I have only one person to introduce, my husband of 30 years, Greg Quagliotti. He's the guy sitting back there with the 82nd Air-

borne Division pin on today.

And I would like to acknowledge the many friends around the world who sent notes and well wishes and who wanted to be here today, but could not because they remain on active duty.

Thank you.

Senator KLOBUCHAR. Very good. Thank you very much. Thank you, all of you.

I'm going to turn it over to Senator Grassley to first ask some

questions.

Senator Grassley. Mr. Green, have you ever tried a case in Federal court? Have you ever appeared in Federal court?

Mr. Green. No, I've not tried a case in Federal court.

Senator GRASSLEY. Your Senate questionnaire also states that less than 1 percent of your practice has been in civil proceedings. How are you prepared to handle civil matters in Federal court?

Mr. GREEN. The civil work that I did, Senator, was with Morris & Morris prior to joining the District Attorney's Office. For the last 24 years I have done extensively—or exclusively criminal work in the District Attorney's Office. I think that certainly it will be a transition that I will have to make, but I've proven throughout the course of my career that I can make transitions and I've transitioned into different areas of law.

For example, when New York State enacted the capital statute in 1995, I had to make the transition. I was the person designated to get up to speed on capital prosecutions, lead the office, and in fact wound up teaching attorneys around the State how to prosecute capital cases. So this will clearly be a transition, but I think my record shows that given my work ethic and given my ability,

I'll be able to make that transition.

Senator Grassley. A minority of the ABA Standing Committee found you Not Qualified for the position. Tell the Committee, please, about your background and experience that make you quali-

fied to sit as a Federal District Court Judge.

Mr. Green. Certainly. I started my career working at Morris & Morris, doing mainly plaintiffs' personal injury work and real estate work. It was a very short period of time that I was there. I joined the District Attorney's Office, and for the last 24 years have been doing almost exclusively criminal litigation. I've tried about 110 felony cases. In addition to that, I've tried hundreds of misdemeanor cases. I continue to try cases. I've been the District Attorney for the last 8 years and have continued to try the major high-profile cases in our office during that time.

I've spent the bulk of my 24 years as an attorney in court, trying major cases, litigating. I think that that experience—through that experience I know what it takes to be a good judge in a case. I

know the difference a good judge can make. I've had the opportunity to see the qualities that judges exhibit that help make sure that justice is done in particular cases. I think that litigation expe-

rience will clearly help me make the transition.

I think the other thing that will help me make the transition is, as a prosecutor, I'm not just an advocate. Clearly I am an advocate and that's different than the role of a judge, but I'm also tasked with the responsibility of seeking justice. And for the last 24 years, I've done that. While the work that I do seeking convictions may get more publicity, there are many occasions when doing justice requires me or my assistants to dismiss cases or make decisions not to bring charges because that's just. And I think that that experience will also help me make the transition.

Senator GRASSLEY. You served as a member of the New York Commission on Sentencing Reform. In a *New York Law Journal* article you were cited as supporting the proposition that non-violent, drug-addicted offenders should be sent into treatment instead of prison, so long as it does not jeopardize humans' public safety.

Would you please explain this idea to the Committee?

Mr. ĞREEN. Certainly. I did serve as a member of the Sentencing Reform Commission. I was one of 11 members. There was some very vigorous debate on the commission with regard to where New York should go with their sentences and with their legislation, par-

ticularly in the area of the drug legislation.

I tried to advocate for positions that I felt struck an appropriate balance between providing treatment for people in the criminal justice system that needed treatment, but also making sure that it was done in a way that did not jeopardize public safety. There were some parts of the Sentencing Commission's recommendations that I agreed with and I felt struck that balance appropriately. There were other parts that I disagreed with and felt that they did not strike that balance and that they did not adequately provide for public safety.

Senator GRASSLEY. As a prosecutor, what has been your record on prosecuting non-violent drug offenders, particularly focusing on those charged with use or possession as opposed to distribution?

Mr. GREEN. I think the first thing I would say is that sometimes I think it's a misnomer to say "non-violent" drug crimes because I think if you just look at the crime itself and the label that you put on it, it doesn't tell the whole story. I think that as a prosecutor, you have to look behind each case and look at the person you're dealing with, look at the record, and try and figure out if this is someone who is a user who's never engaged in violence before, is not posing a risk to the community as opposed to, is this someone who is involved in, for example, gang activity, drug sales.

Even if the charge they're arrested for is a possession charge, you know, are they someone who poses a significant danger to the community? That's what I've tried to do as a prosecutor, and on occasions where I feel with drug possession cases, that we have someone who can safely be put into drug treatment without jeopardizing the community, I've certainly supported that position at times. In other cases where I felt that we had an individual with charges pending who posed a significant danger to the community, I've advocated that that person be incarcerated to protect the community.

Senator Grassley. My last question. The previous New York Journal that I referred to quoted you as stating that "both prosecutors and judges should play a meaningful role in who gets placed into treatment". You're a board member of Huther-Doyle Memorial Institute, a not-for-profit agency that provides addiction treatment and recovery services to drug and alcohol addicts.

Do you see any conflict of interest with your current role as District Attorney where you'll recommend treatment in your position as a board member for the institute, an institution providing treatment services, and presumably receiving payment for those serv-

Mr. Green. I do not see any conflict. If there's a particular issue that came up that I felt posed a conflict I would recuse myself.

In terms of the article that you referenced, maybe you can rephrase that part of the question. I'm sorry, I got focused on the

Huther & Doyle part.

Senator Grassley. I will state the whole question again. Do you see any conflict of interest with your current role as District Attorney where you recommend treatment in your position as board member for the institute, an institution which provides treatment service and presumably receiving payments for those services?

Mr. Green. First of all, our office is not involved in terms of making payments. We certainly have a role in recommending or opposing someone being put into treatment. As to the first part of your question where you pointed out that in some instances I felt that prosecutors and judges should have a meaningful role, one of the things that I advocated for throughout the Sentencing Commission proceedings was on what I felt were serious drug felony cases, people who in my community were involved in drug sales, many times were gang members, people that posed a risk to the commu-

I felt that on those types of cases, prosecutors shouldn't be cut out of the equation. I felt prosecutors had some information, sometimes information that judges don't have, and sometimes information that's very difficult to share on the record. And in certain instances I felt members of the Sentencing Commission were trying to push legislation that would cut prosecutors out of that decision-

making process and I was opposed to that.

As to the Huther-Doyle part of the question, no, I don't see any conflict. I see my role on the board, and my role on the board has been where I can, to help make sure that Huther-Doyle, and frankly other treatment agencies, are aware of the needs of the criminal justice system and are in a position to respond to the needs of the criminal justice system when judges see fit to refer people.

Senator Grassley. Thank you, Mr. Green.

Thank you, Madam Chairman.

Senator KLOBUCHAR. Thank you very much, Senator Grassley. And just to confirm, Mr. Green, the majority of the ABA found you qualified for this position. Is that right?

Mr. Green. That's correct. Thank you, Senator.

Senator KLOBUCHAR. OK. Very good.

And I just thought I'd ask a general experience—a general question of all of you. I just was noting that you all have decades of experience under your belt. That's why I said the word "experience". And I thought if you could just each go, the first three of you, go through your—what you describe as your judicial temperament and what you think would make you a good judge.

Ms. Marmolejo.

Ms. Marmolejo. Thank you, Senator, for the question. Thank you for the question, Senator. I have been fortunate in that I have grown up in the Federal system. My first job out of law school was working as an assistant Federal public defender for a couple of years, and then I worked as a Federal prosecutor for over 8 years. And I believe that during this time my colleagues would describe me as a person who is not only fair, but who possesses a calm and even-tempered demeanor.

And I believe the judges should, in fact, possess a calm and eventempered demeanor, and that's what I would hope to bring to the bench, along with a strong commitment to follow the law in every case and a commitment to approach each case with an open mind, without pre-judging any situation, and to truly give litigants their

day in court.

Senator KLOBUCHAR. Very good.

Mr. Green.

Mr. Green. Thank you, Senator. As District Attorney, I think I find myself every day in many pressure-packed situations and I always pride myself on the fact that I am calm as I do my job, I reason through decisions, and I think people respect the work that I do. As a judge, I think that those qualities would serve me well. I think it's important that a judge sets the tone for his or her courtroom, and I would do that through my work ethic, through the quality of my work, and through the dignity and the respect that I show for all parties that appear in my courtroom.

I show for all parties that appear in my courtroom.

In terms of the work itself, I would be the type of judge who, in finding the facts, would make sure to convey to all of the litigants that I understand their position. Once I found the facts, I would apply the law as it is, whether it's from the Constitution, or statutes, or Supreme Court, or Second Circuit cases that I would be bound to follow, and I would try and render decisions promptly as possible because I believe all parties, particularly parties in Federal court, are entitled to justice that's not only appropriate, but

also prompt.

Senator KLOBUCHAR. Very good. Thank you.

And Ms. Lewis.

Ms. Lewis. Thank you, Senator. I believe during the course of my professional career I've had the opportunity to perform in a number of different roles, as advocate, as impartial decisionmaker, and in particular as the Inspector General of the Department of the Interior, and as the U.S. Attorney, as counselor, in an in-house capacity of the Department of the Interior, indeed, as teacher as I served as an adjunct faculty member of the George Washington University Law School in terms of—with respect to trial advocacy matters.

Throughout the course of that career I believe I have developed the kinds of skills, and indeed the temperament, that would hold me in good stead as a Federal District Judge. I believe I have a very strong commitment to public service, I think as demonstrated by my record. I believe I would be fair, but firm. I listen carefully to all different perspectives before making decisions, and indeed like to hear the opposite perspective to the direction that I am in-

clined to go.

So I believe I would have that as an attribute as well as a judge. I believe I would set a tone for the courtroom. I would strive to do that, in which everyone has the opportunity, all the litigants have their day in court, and to have a full and fair opportunity to be heard. I would be strictly adhering to the rule of law and the precedent, and I think throughout my career I have demonstrated that as well. So I think those skills, those qualities would be the ones that I would seek to bring to the bench.

Senator KLOBUCHAR. Thank you very much.

General Quagliotti, just a few questions of you. Could you describe what your job is for everyone that you are being nominated for, the Director for Supply Reduction? I can guess, but can you describe it for all of us?

General Quagliotti. Yes, Senator. I'll be happy to. In the Office of National Drug Control Policy there are three deputies: one is for supply reduction, which would be the one that I am being nominated for; one is for demand reduction; and one is for State, local and tribal collaboration and coordination. So I would be nominated for Supply Reduction.

Senator KLOBUCHAR. OK. Very good.

And what's the major focus then? It's on making sure that we re-

duce our supply of illegal drugs? Is that right?

General QUAGLIOTTI. Correct. And really the portfolio for this office is mainly an international portfolio, so dealing with countries that are outside the United States which are trying to reduce drug trafficking organizations within their own country.

Senator KLOBUCHAR. Very good.

And in Panama you spent 2 years as a Brigade Commander, working to stop the flow of illegal drugs into the U.S. And you also advised the Colombia army on command and control issues related to illegal drugs. Can you tell us about this experience and how that will help you in this job?

General QUAGLIOTTI. Yes, Senator. You know, I've traveled across the world throughout my 32 years as an active duty soldier, spent a lot of time, 9 years, overseas. The 2 years that really impressed me the most was the time that I spent in Panama as Bri-

gade Commander.

And during that period of time my organization deployed over 50 times into Central and South America, and during those deployments we were actually supporting projects that were sponsored by the State Department and really the responsibility of SouthCom, which is the military command in that region. We were supporting emerging democracies because at that time, which was 1995 to 1997, we still had insurgency movements in Central and South America.

So I really became familiar with the effect that drugs can have on a democracy, on the corrupting effects that it can have with the judicial system, the military, law enforcement, and even in the daily lives of the people who live in the countries. So I believe that I have the international experience, the interagency experience to negotiate, collaborate, and work with Central and South America, as well as other countries, to reduce the flow of drugs into the United States. $\,$

Senator Klobuchar. Very good.
And I also wanted to congratulate you on becoming the first female signal soldier to obtain the rank of Major General.
General Quagliotti. Thank you, Senator.
[The biographical information follows.]

1114

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. Name: State full name (include any former names used).

Marilyn Ann Quagliotti, Maiden Name: Marilyn Ann Hathorn

2. Position: State the position for which you have been nominated.

Deputy Director for Supply Reduction, Office of National Drug Control Policy

3. <u>Address</u>: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

9405 Meadow Crossing Way, Fairfax Station, Va. 22039

4. Birthplace: State date and place of birth.

9/30/1953 Ft. Walton Beach, Florida

 Education: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

National War College – Master of Science Degree (non-accredited) National Security Strategy, May 1993- June 1994
Louisiana State University – Bachelor of Science Degree – Health Recreation and Physical Education, June 1971 -Dec 1974

6. Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

June 2010 – Present – Associate Durango Group, Inc I Copley Parkway, Suite 200 Box 23, Morrisville NC 27560

January 2010 – Present – Technical Advisory Board Member Acelsior, Inc 1200 G Street NW Suite 550 Washington, D.C. 20005

March 2010 - Present - Volunteer Committee Co Chair for Community Foundation for Northern Virginia 8283 Greensboro Drive McLean, Va. 22102

June 2009 – Present – Independent Consultant, Self Employed 9405 Meadow Crossing Way Fairfax Station, Va. 22039

Dec 2009 – June 2010 – Independent Contractor Deloitte Consulting, LLP 1700 Tyson's Blvd. McLean, Va. 22102

Sept 2007 – May 2009 – Senior Manager at Deloitte Consulting, LLP,
 Suite 210
 North Fairfax Dr.
 Arlington, Va. 22203

Aug 1975- May 2007 - Officer in U. S. Army

- · August 1975- April 1976 Signal Officer
- May 1976 June 1977 Operations Officer and Commander
- June 1977- January 1978 Instructor
- January 1978- October 1978 Aide-de-Camp to Commanding General
- October 1978- February 1980 Platoon Leader
- February 1980 March 1981 Commander
- March 1981 September 1981 Student
- September 1981- August 1982 Plans and Engineer Officer
- August 1982 June 1983 S-2/3(Intelligence/Operations)
- June 1983-May 1986 Radio Officer
- May 1986-June 1987 Student
- June 1987-November 1988- Fielding Officer
- November 1988-May 1990- Executive Officer
- May 1990- May 1991 S-3 (Operations)
- May 1991 May 1993 Commander
- May 1993-June 1994 Student
- June 1994- June 1995- Staff Officer
- June 1995- May 1997- Commander
- May 1997 July 1998 Deputy Director for Command, Control, Communications and Computer Systems
- July 1998 June 2000 Vice Director for Command, Control, Communications and Computer Systems
- June 2000-March 2003 Commanding General
- March 2003 October 2003 Deputy Director for Operations
- November 2003 April 2007 Vice Director
- Military Service and Draft Status: Identify any service in the U.S. Military, including
 dates of service, branch of service, rank or rate, serial number (if different from social
 security number) and type of discharge received, and whether you have registered for
 selective service.

1975- 2007 – U.S. Army Officer Rank at Retirement – Major General Discharge- Honorable Not required to register for Selective Service

 Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Distinguished Service Medal
Defense Superior Service Medal (with Oak Leaf Cluster)
Legion of Merit
Meritorious Service Medal (with 4 Oak Leaf Clusters)
Army Commendation Medal (with 2 Oak Leaf Clusters)
Army Achievement Medal (with Oak Leaf Cluster)
Parachutist Badge
Joint Staff Identification Badge
Army Staff Identification Badge

 Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

N/A

10. Bar and Court Admission: N/A

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.
- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

11. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

May 1989 – Present - Member - Armed Forces Communications Electronics Association

Feb 1996 – Present- Member - Association of the United States Army
May 1978 (estimate) - Present- Member - Signal Corps Regimental Association
June 2007- Present – Member - Military Officers Association of America
November 2004 – Present – Member - Women's Memorial Foundation
June 2010 – Present – Member - US Army Women's Foundation
March 2010 – Present- Volunteer Committee Co Chair - Northern Virginia
Community Foundation –for the Military Members and Family Fund
Committee

b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of these organizations has engaged in discrimination on the basis of race, sex, religion or national origin.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, and letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

None.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

1999-2007: Briefing to military members or allies at industry exchanges about Command and Control challenges for War fighting Forces, Organizational Changes to Accommodate Information Technology Opportunities, and Future Operational Advantages of Information Superiority for War fighting Forces.

 List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

"A Hard-Earned Star *** BR native Marilyn Hathorn Quagliotti has risen to the rank of brigadier general" *Sunday Advocate* (Baton Rouge, L.A.), December 31, 2001.

I also gave an interview to the *Military Information Technology Magazine*, a professional Journal for Military Information Technology professionals in the 2004 timeframe. The story was the featured article of the magazine and I was on the cover. The on line archives of the magazine only go back to 2006.

While a Commander in Germany from 2000 to 2003, I was also interviewed by a writer from a *German Military Journal*. The article was written focusing on my position as the first woman General Officer Commander in Europe. I cannot locate a copy of this article.

13. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

14. Legal Career: Answer each part separately. N/A

- Describe chronologically your law practice and legal experience after graduation from law school including:
 - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;
 - ii. whether you practiced alone, and if so, the addresses and dates;
 - iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.
 - iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.
- your typical clients and the areas at each period of your legal career, if any, in which you have specialized.
- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.
 - i. Indicate the percentage of your practice in:
 - 1. federal courts:
 - 2. state courts of record;
 - 3. other courts;
 - 4. administrative agencies
 - ii. Indicate the percentage of your practice in:
 - 1. civil proceedings;
 - 2. criminal proceedings.
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
 - i. What percentage of these trials were:
 - jury;
 - 2. non-jury.
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.
- 15. <u>Litigation</u>: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case: N/A
 - a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

16. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

N/A

17. <u>Teaching</u>: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

None.

18. <u>Deferred Income/ Future Benefits</u>: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Federal Government Military Pension - \$122,556 (1 June 2007-end of life) Chase Bank CD'S - \$56,548 (begin withdrawal in 2020) Vanguard Prime Money Market IRA- \$28,217 (begin withdrawal in 2020) Vanguard Life Strategy IRA - \$44,479 (begin withdrawal in 2020)

 Outside Commitments During Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

No.

20. <u>Sources of Income</u>: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here). Substitute Financial Disclosure Form

Financial Disclosure Form attached.

 Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).

22. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to

which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Office of National Drug Control Policy's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with ONDCP's designated agency ethics official.

 Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Office of National Drug Control Policy's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with ONDCP's designated agency ethics official.

23. <u>Pro Bono Work</u>: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I am currently a volunteer on two projects.

The first project began on November 2009 and continues to the present. It is the Women in Leadership Oral History project which is sponsored by the Women's Memorial Foundation. This project requires 6 hours of my time per week. This project is not for the disadvantaged per se. The purpose of the project is to record leadership experiences of Women in the Military with the intent to pass on their collective wisdom to younger women.

The second project, I am the Co Chair for the Community Foundation for Northern Virginia. This project began in March 2010 and continues to the present. So far, this project has required less 1 hour a week, of my time. This project involves connecting the Northern Virginia Community Foundation, who desires to establish a fund to assist military members and families, with military organizations and charities that support the military members and their family. The Foundation has raised over \$200,000 for this cause. (These funds were raised prior to the nominee's assumption of responsibilities.)

FINANCIAL STATEMENT

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		599	140	Notes payable to banks-secured			0
U.S. Government securities-add schedule			0	Notes payable to banks-unsecured			0
Listed securities-add schedule			O .	Notes payable to relatives			0
Unlisted securitiesadd schedule			0	Notes payable to others			0
Accounts and notes receivable:			0	Accounts and bills due			0
Due from relatives and friends			0	Unpaid income tax			0
Due from others			0	Other unpaid income and interest			0
Doubtful			0	Real estate mortgages payable-add Schedule		581	388
Real estate owned-add schedule	1	192	790	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts-itemize:			0
Autos and other personal property		35	000				
Cash value-life insurance			0				
Other assets itemize:			0				
Retirement Accounts		283	279				
				Total liabilities \$581,387.27		581	387
Total Assets	2	110	209	Net Worth \$1,528,821.78	1	528	821
CONTINGENT LIABILITIES				Total liabilities and net worth	2	110	209
As endorser, comaker or guarantor			0	GENERAL INFORMATION			
On leases or contracts			0	Are any assets pledged? (Add schedule)			No
Legal Claims			0	Are you defendant in any suits or legal actions?			No.
Provision for Federal Income Tax			0	Have you ever taken bankruptcy?			No
Other special debt	Γ		0				

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Retirement Accounts Schedule:	or the the transfer to the state of the stat
Retirement CD'S (M. Quagliotti) Retirement CD (Joint Account) Vanguard Prime Money	\$56,548 \$26,581
Market IRA (F) Vanguard Life Strategy	\$28,214
Fund IRA (F) Vanguard Tax Exempt	\$44,439
Money Market IRA(S) QinetiQ North America	\$79,860
Operations 401k Plan (S)	\$47,637
Real Estate Schedule:	
Residence [Wells Fargo]	Value: \$593,790 Mortgage: \$178,775
Vacation Home [SunTrust Mortgage]	Value: \$599,000 Mortgage: \$402,613
I, <u>MARLYN A.</u> that the information	AFFIDAVIT , do swear provided in this statement is, to the best
of my knowledge, tru	
MARCH 11, 2011	Marily A. Guaghotte

(NOTARY)

1124

May 4, 2011

The Honorable Patrick Leahy Chairman Committee on Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

The Honorable Charles Grassley Ranking Member Committee on Judiciary United States Senate 152 Dirksen Senate Office Building Washington, D.C. 20510

Dear Chairman Leahy and Senator Grassley:

I am writing to amend my response to question 12 (c) of the of the Judiciary Committee questionnaire that I submitted in connection with my nomination to be Deputy Director for Supply Reduction within the Office of National Drug Control Policy. Since submitting the questionnaire, it has come to my attention that this testimony was submitted on my behalf in 2004 before the House Armed Services Committee. I did not testify at this hearing, but it was submitted in my official capacity.

Thank you again for your consideration of my nomination.

Sincerely. Marilyn a. Duagleotte.

Marilyn A. Quagliotti

Senator Klobuchar. Very good. I note that three of our four nominees are women. You broke the glass ceiling, Mr. Green, to be included in this group.

[Laughter.]

Senator KLOBUCHAR. In any case, I want to congratulate all of you on a job well done. I don't think we have any remaining questions, although Senators are welcome to submit questions for the record. The record will remain open for 1 week.

record. The record will remain open for 1 week.

I wish you all well. Thank you and all of your extended families for being here, and those of them watching on webcast. So, have a very good day.

With that, this hearing is adjourned.

[Whereupon, at 3:43 p.m. the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Michael C. Green Nominee to be United States District Judge for the Western District of New York to the Written Questions of Senator Chuck Grassley

 Given your work on the New York Commission, and considering your experience with criminal law, what is your familiarity with the Federal Sentencing Guidelines?

Response: I am familiar with the Federal Sentencing Guidelines from several different sources. First, as District Attorney I have worked with the United States Attorney's Office on a regular basis to determine whether cases can be prosecuted most effectively in state or federal court. This analysis included an examination of the applicable sentencing provisions in each jurisdiction, which in federal court required review of the Federal Sentencing Guidelines. Also, as a member of the New York Sentencing Commission, I studied the Federal Sentencing Guidelines as a reference in making recommendations for New York's sentencing scheme. Finally, I have been studying federal law, including the Federal Sentencing Guidelines, in preparation for my work as a federal district court judge, in the event I am confirmed by the United States Senate.

a. What was your position, while serving on the New York Commission, regarding mandatory minimum sentencing?

Response: As a member of the Commission I advocated for mandatory minimum sentences for those offenders convicted of crimes which threaten the safety of our communities.

b. If confirmed, under what circumstances would you depart from the Federal Sentencing Guidelines?

Response: Understanding that the Supreme Court in <u>United States v. Booker</u>, 543 US 220 (2005), held that the Federal Sentencing Guidelines are advisory, not mandatory, if confirmed as a district court judge, I would nevertheless give substantial deference to the applicable sentencing ranges calculated pursuant to the Guidelines. I would only consider departing from the Guidelines in an individual case when I felt a departure was warranted based upon the applicable statutory and decisional law. For example, I would consider a departure pursuant to 18 U.S.C. § 3553(e) when the government makes a motion for a departure based upon substantial cooperation by the defendant. In all cases, I would be strongly guided by the provisions of the Federal Sentencing Guidelines and any relevant decisions of the United States Supreme Court and Second Circuit Court of Appeals.

2. Do you believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress that it deems unconstitutional? If so, under what circumstances, and applying what factors?

Response: Yes, I believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress. Such a decision would be proper when the judge

determines, after careful consideration, that such act exceeds Congressional authority as articulated in the Constitution and in relevant Supreme Court precedent.

3. What is the most important attribute of a judge, and do you possess it?

Response: I believe the most important attribute of a judge is to be able to promptly decide cases on the narrow issues presented after making fair and impartial findings of facts, identifying and apply controlling statutory and case law, and applying that law to the facts of the particular case. I believe I possess this ability.

4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should treat everyone with dignity and respect; should act in a manner that affords the federal courts and federal law the respect they deserve; and, should be firm in managing the docket, including ensuring that the décorum of the court is always maintained and that all decisions are prompt and just. I believe that I possess and have demonstrated that I possess the qualities that will ensure that I conduct myself in this manner should I have the honor of being confirmed as a federal district court judge.

5. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

6. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: I would start by finding the facts in a fair and objective manner. I would then turn to an analysis of the language of the statute or provision of the Constitution at issue, and if necessary and available, any legislative history that sheds light on the meaning of the statute. I would also look to the decisions of the United States Supreme Court, the Second Circuit Court of Appeals, and the other Circuit Courts in which these courts have decided similar cases, for further guidance in addressing a case of first impression. I would attempt to decide the issue as narrowly as possible consistent with the language of the Constitution or statute in question, considering any relevant precedent.

7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: If I am confirmed as a district court judge, I would follow all controlling law regarding any issue that came before me as set forth by the United States Supreme Court and the Second Circuit Court of Appeals without regard for my personal opinions.

8. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: As a judge I would set an example for all parties in terms of my work ethic and level of preparation. I would make sure criminal cases are handled according to the applicable speedy trial standards. I would utilize scheduling orders and be firm in holding parties to those orders to facilitate the prompt disposition of cases. I would use the resources available to me, including magistrate judges, and effective methods developed by other judges in my district, including mediation where appropriate, to help manage the caseload. I would conduct court proceedings in a fair but efficient manner and make decisions promptly.

9. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: I believe judges play a significant role in controlling the pace and conduct of litigation; and, if confirmed, I would take the steps outlined in my response to question 8 to control my docket.

10. Please describe with particularity the process by which these questions were answered.

Response: I received these questions from the Department of Justice via email on the evening of May 31, 2011. I prepared draft responses to the questions and then reviewed them with the Justice Department. I then finalized my answers and emailed them to the Justice Department for submission to the Judiciary Committee.

11. Do these answers reflect your true and personal views?

Response: Yes.

1129

Responses of Michael C. Green Nominee to be United States District Judge for the Western District of New York to the Written Questions of Senator Tom Coburn, M.D.

1. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: No, I do not agree that the Constitution is constantly changing as society interprets it. While courts may be called on to apply the Constitution to new or different factual scenarios, the only way the Constitution itself changes is by a Constitutional Amendment.

2. Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?

Response: No.

3. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?

Response: As a district court judge, I believe I would be bound by the text of the Constitution and the relevant United States Supreme Court and Second Circuit Court of Appeals cases interpreting the Constitution. I do not believe the Constitution changes through social movements, legislation, and historical practice.

4. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?

Response: The United States Supreme Court has made it clear that Congressional power under the Commerce Clause is not absolute and is subject to limitation. As a district court judge I would follow and be bound by Supreme Court decisions such as <u>United States v. Lopez</u>, 514 U.S. 549 (1995) and <u>United States v. Morrison</u>, 529 U.S. 598 (2000) and the relevant decisions of the Second Circuit Court of Appeals in deciding cases involving challenges to Congress's power under the Commerce Clause.

5. The U.S. Supreme Court held in District of Columbia v. Heller, 554 U.S. 570 (2008), that the Second Amendment of the United States Constitution "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." As Justice Scalia's opinion in Heller pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Leaving aside the McDonald v.

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Chicago decision, do you personally believe the right to bear arms is a fundamental right?

Response: The United States Supreme Court, in McDonald v. Chicago, 130 S. Ct. 3020, 3042 (2010), held that the right to bear arms is a fundamental right, and I have no personal opinions or beliefs that would interfere with my ability to follow the precedent of the Supreme Court on this issue.

a. Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.

Response: The United States Supreme Court held in McDonald v. Chicago, 130 S. Ct. at 3036, that for purposes of determining if rights such as those guaranteed in the Bill of Rights apply against the states under the due process clause of the fourteenth amendment, most, but not all, of the rights contained in the first eight amendments are fundamental rights that apply against the States. I have no beliefs that would interfere with my ability to follow the precedent of the Supreme Court on this issue.

b. Is it your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.

Response: Yes, as explained in the answer to 5.a. above.

c. The Heller Court further stated that "it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right." Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.

Response: I believe the United States Supreme Court, in <u>Heller v. District of Columbia</u>, 554 U.S. 570(2008), held that the Second Amendment, like the First and Fourth Amendments, codified pre-existing rights, and I have no beliefs that would interfere with my ability to follow the precedent of the Supreme Court on this issue.

6. Some have criticized the Supreme Court's decision in Heller saying it "discovered a constitutional right to own guns that the Court had not previously noticed in 220 years." Do you believe that Heller "discovered" a new right, or merely applied a fair reading of the plain text of the Second Amendment?

Response: I believe the United States Supreme Court's decision in <u>Heller</u> was based on the text of the Second Amendment.

 Similarly, during his State of the Union address, the President said the Supreme Court's decision in Citizens United v. FEC, 558 U.S. ____ (2010), "reversed a century of law" and others have stated that it abandoned "100 years of precedent." Do you agree that the Court reversed a century of law or 100 years of precedent in the *Citizens United* decision? Please explain why or why not.

Response: The United States Supreme Court, in <u>Citizens United v. FEC</u>, 130 S. Ct. 876 (2010), pointed out that it was faced with conflicting lines of precedent, namely cases predating <u>Austin v. Michigan Chamber of Commerce</u>, 494 U.S. 652 (1990) which prohibited speech restrictions based on a speaker's corporate identity, and the post-<u>Austin</u> cases which recognized such restrictions as constitutional. In reconciling these conflicting lines of cases the Supreme Court overruled <u>Austin</u>.

7. What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?

Response: The United States Supreme Court, in Heller v. District of Columbia, 554 U.S. 570 (2008) stated that "[a]Ithough we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms". In McDonald v. Chicago, 130 S. Ct. 3020 (2010), the Supreme Court reaffirmed this concept.

a. In McDonald v. Chicago, the majority wrote: "We made it clear in Heller that our holding did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill,' 'laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."

What if a state passed a law imposing a \$2,000 registration fee as a condition for the commercial sale of a firearm? Without stating how you would rule in such a case, please explain how you would conduct your analysis to determine whether the fee violated the Second Amendment right to keep arms?

Response: If confirmed as a district court judge and faced with an issue as described in this question, I would look to the applicable United States Supreme Court and Second Circuit case law interpreting the Second Amendment, including the holdings from Heller and McDonald referred to in the answer to question 7 above, and apply them to the facts of the case before me.

i. To what cases or authorities would you refer? Please be specific.

Response: Please see the response to Question 7.a. above.

b. If the New York legislature outlawed the carrying and possession of firearms on the grounds of hospitals that have psychiatric wards, regardless of whether the hospital was private, and someone challenged that law on constitutional grounds in a case that was before you, please explain how you would conduct your analysis to determine whether that regulation complied with the Second Amendment's guarantee of the right to bear arms without stating how you would rule in such a case. Please be specific as to which cases and authorities you would refer and what weight you would give them.

Response: If confirmed as a district court judge and faced with an issue as described in this question, I would look to the applicable United States Supreme Court and Second Circuit case law interpreting the Second Amendment, including the holdings from <u>Heller</u> and <u>McDonald</u> referred to in the answer to question 7 above, and apply them to the facts of the case before me.

i. Could a hospital qualify as a "sensitive place?" Why or why not?

Response: Please see the answer to question 7.b. above.

c. Is the Second Amendment limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?

Response: 1 do not believe the Supreme Court holdings in <u>Heller</u> or <u>McDonald</u> specifically limited the application of the Second Amendment to protect only possession of a handgun in a home for self-defense.

8. In Roper v. Simmons, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?

Response: If confirmed as a district court judge I would be bound by and would follow the holding of the United States Supreme Court in <u>Roper v. Simmons</u> regardless of any personal beliefs or opinions I may have on the issue.

a. Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"

Response: If confirmed as a district court judge and faced with such a challenge, I would apply the United States Supreme Court and Second Circuit Court of Appeals precedent when considering a claim of cruel and unusual punishment under the Eighth Amendment.

b. How would you determine what the evolving standards of decency are?

Response: Please see the answer to question 8.a. above.

c. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: The Supreme Court has held that the death penalty is not unconstitutional in all cases and if confirmed as a district court judge I would have no difficulty following and applying this holding. I believe it would be improper for a district court judge to hold otherwise in the face of existing Supreme Court precedent.

d. What factors do you believe would be relevant to the judge's analysis?

Response: In light of the answer to question 8.c. above, I do not believe any such analysis would be appropriate for a district court judge.

e. When determining what the "evolving standards of decency" are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, ¹ in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. ² Do you believe either standard has merit when interpreting the text of the Constitution?

Response: If confirmed as a district court judge, I would interpret the text of the Constitution based on a reading of the text and any United States Supreme Court or Second Circuit Court of Appeals cases on point. I would not consider the laws of the states or foreign laws unless I was specifically required to do so by the law as established by the above-mentioned courts.

If so, do you believe one standard more meritorious than the other?
 Please explain why or why not.

Response: Please see the answer to question 8.e. above. I would only consider these sources to the extent required and in the manner required by Supreme Court and Second Circuit precedent.

9. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?

Response: If confirmed as a district court judge it would not be proper for me to look to foreign or international law in interpreting the Constitution or laws of the United States unless required by Supreme Court and Second Circuit precedent, and if so, only to the extent required.

¹ Roper v. Simmons, 543 U.S. 551, 564-65.

² Graham v. Florida, 130 S.Ct. 2011, 2033-34.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: Please see the answer to question 9 above.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Please see the answer to question 9 above.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: Please see the answer to question 9 above. I believe the laws of the United States should be interpreted by reference to legal sources within the United States.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: Please see the answer to question 9 above.

10. You noted in your hearing testimony that you not only prosecute cases, you also have to "seek justice" and there are "many" occasions when doing justice requires you to dismiss a case or make a decision not to bring charges because "that's just." Please explain in detail what specific factors you consider when deciding to dismiss a case or not bring charges.

Response: While every case is different and must be considered individually, the analysis involves an examination of the facts of the case in light of the applicable law.

a. Please provide some examples of cases where you decided not to bring charges or dropped the case and include details about the potential charges and factors you considered when making your decision.

Response: The three cases that come to mind immediately are People v. Douglas Warney, People v. Frank Sterling, and People v. Freddie Peacock. In each of the cases the defendant was convicted by a jury, Warney and Sterling of murder, and Peacock of rape. I was not District Attorney, nor was I involved in the original prosecution of any of the cases. However, during my term as District Attorney my office uncovered and/or was provided with evidence, including DNA evidence in all three cases, which after extensive investigation, established that each defendant was wrongfully convicted. In all three cases I moved, jointly with the defense, to have the convictions set aside and to have the indictments dismissed.

b. Did your decision involve empathy towards the perpetrator?

Response: No.

c. What role do you believe empathy should play when judges are deciding cases?

Response: While I believe it is important for a judge to strive to understand the perspective of all parties in the fact finding part of the process, I believe a judge's ultimate decision must be based on an impartial application of the controlling law to the facts of a case. Sympathy or other feelings for or against a party must play no part in judicial decision making.

d. Do you believe empathy is an essential ingredient for arriving at just decisions and outcomes and should play a role in a judge's consideration of a case?

Response: Please see the response to 10.c. above.

11. In your testimony, you stated that you often recommended drug treatment rather than jail time for certain drug-related arrests. Please provide statistics for the number of drug felony cases in your office disposed of by plea, trial, or other disposition, since you took over as District Attorney in 2004. Please list each separately and include the national and statewide averages for each category of offense as well.

Response: From January 1, 2004, to present 4,135 (73%) drug felony cases prosecuted by my office have been disposed of by plea, 107 (2%) by trial, and there have been 1,480 (25%) other dispositions. New York State data shows 86% of drug felonies are disposed of by plea, 1% by trial and 13% by other disposition. National data shows 65% of drug felony cases are disposed by plea, 2% by trial, and 33% by other disposition. Please note that these comparisons are approximate and are based on different data sources and different time frames.

12. Please provide a brief summary of and citation for each case in which you asked for a sentence for a defendant which was below what was called for by the U.S.

Sentencing Guidelines. Please include the sentencing range called for under the guidelines, the sentence you requested, and the sentence issued by the judge.

Response: I have personally prosecuted and made sentence recommendations on thousands of cases in my twenty-four years as a prosecutor. Because all these cases involved defendants convicted of violating New York State's criminal statutes, and New York State crimes have different elements than federal criminal offenses, it is not possible to accurately compare my sentence recommendations to the Federal Sentencing Guidelines. New York State has its own sentencing guidelines (See NY Penal Law Articles 60 and 70). I have never recommended a sentence below the sentencing range authorized by New York law; and to the best of my knowledge, a judge has never imposed a sentence below the range authorized by New York law on any of the cases I prosecuted.

13. You also noted in your hearing testimony that you were the "person designated to get up to speed on capital prosecutions, lead the office, and in fact wound up teaching attorneys around the State how to prosecute capital cases" after New York State enacted a capital penalty statute in 1995. Can you please explain in detail what information you provided attorneys around the State about how to prosecute capital cases?

Response: In January, 1998, I served as a member of a panel discussing "Emerging Legal Issues" at a Statewide Conference on Capital Prosecution organized by the New York Prosecutors Training Institute (NYPTI). In August, 1999, I gave a lecture entitled "Arguing for Death" at a Statewide Conference on Capital Prosecutions — Demonstrations and Discussions organized by NYPTI. In August, 2001, as part of a Capital Prosecution Survey Course organized by NYPTI, I gave a presentation entitled "A View From the Box" regarding jurors in capital cases. In February, 2002, as part of a conference hosted by NYPTI entitled "Terrorism and Emerging Legal Issues in Murder Prosecutions," I gave a presentation entitled "Handling a Death Penalty Case." The above presentations were listed in response to question 12.d. on my United States Senate, Committee on the Judiciary, Questionnaire for Judicial Nominees and if outlines exist, they were provided with the Questionnaire.

In addition to these formal presentations I served as part of a panel of prosecutors from across New York who were available to and did provide advice to other New York prosecutors on issues related to the prosecution of capital cases. This was generally done by way of telephone conferences. I do not have notes of specific cases or issues discussed during these conferences. Additionally, on at least one occasion that I can recall, prosecutors from another county in New York came to my office and I spent two days assisting them in preparing for a capital trial in their county.

a. How many capital cases have you prosecuted in your career?

Response: I was lead prosecutor on three cases where a notice of intent to seek the death penalty was actually filed.

 Please provide a brief summary of and citations for each death penalty case in which you participated, and, to the extent available, copies of opinions issued in those cases.

Response: Please see the summaries below:

<u>People v. Foued Abdallah aka Tom Cruise</u> (New York State Supreme Court, Monroe County, Indictment #53, 1996)

Abdallah was charged with Murder in the First Degree for breaking into his exgirlfriend's home while she was out, waiting for her, and then stabbing her to death with her seven year old son in the house. The district attorney, Howard R. Relin, filed a notice of intent to seek the death penalty. The defendant pled guilty before trial, with the consent of the district attorney, to Murder in the First Degree with a sentence of life without parole. The defendant appealed and his conviction and sentence were affirmed (People v. Foued Abdallah, 23 AD3d 1116 [4th Dept, 2005], leave denied 6 NY3d 845 [2006]). Abdallah also filed a petition for a writ of habeas corpus in the Western District of New York. Habeas relief was denied and the petition was dismissed by decision and order of Hon. Michael A. Telesca, on April 26, 2010 (Cruise v. Conway, unreported, 2010 WL 1707924 (WDNY 2010). I was lead trial counsel during the prosecution of Abdallah.

People v. Mateo (Monroe County Court, Indictment #914, 1996)

Mateo was charged with Murder in the First Degree, Attempted Murder in the First Degree, kidnapping and other crimes for his role in three separate but related incidents. He was charged with a second count of first degree murder for the commission of four murders in a similar fashion. The first degree murder charges were under a recently enacted capital murder statute. The trial judge dismissed one first degree murder charge on the ground that the murders were not sufficiently similar (People v. Mateo, 175 Misc.2d 192, 218 [Monroe County Ct, 1997]). The People appealed and the trial court's decision was affirmed by the Appellate Division and the Court of Appeals (People v. Mateo, 249 AD2d 894 [4th Dept 1998]; affirmed 93 NY2d 327 [1999]). The trial court also declared a provision of the statute dealing with pleas unconstitutional. The Appellate Division granted a declaratory judgment in favor of the District Attorney (Relin v. Connell, 251 AD2d 1041 [4th Dept, 1998]). The Court of Appeals later reversed the Appellate Division and affirmed the trial court's ruling (Hyncs v. Tomei, 92 NY2d 613 [1998]). The United States Supreme Court denied certiorari (Hynes v. Tomei, 527 U.S. 1015 [1999]).

The District Attorney sought the death penalty and Mateo was tried and convicted of Murder in the First Degree as well as other crimes. The defendant was sentenced to death. The convictions were affirmed on appeal, but the death sentence was set aside due to a ruling that a portion of the state statute was unconstitutional (People v. Mateo, 2 NY3d 383 [2004]). The matter was remitted for resentencing and the defendant was sentenced to life without parole. The defendant filed a petition for a writ of habeas corpus in the Western District of New York. On October 9, 2009, Hon. Michael A. Telesca, denied habeas relief and dismissed the petition. Mateo v. Artus, unreported, 2009 WL 3273878 (WDNY 2009).

Matco's three additional murder charges were tried separately and the defendant was convicted of the murders. The convictions were affirmed (<u>People v. Mateo</u>, 11 AD3d 984 [4th Dept, 2004], *leave denied* 3 NY3d 758). I was the lead prosecutor for all of the Mateo litigation.

1138

<u>People v. Owens</u> (New York State Supreme Court, Monroe County, Indictment #414 and #547, 1999)

John Owens, a five-time felon, was charged with two counts of Murder in the First Degree and additional crimes for the rape and murder of two women. He was also charged with two counts of Rape in the First Degree and related crimes for the forcible rapes of two additional women. The District Attorney sought the death penalty. The two first degree murder charges and one of the rape charges were tried before a jury. The defendant was convicted of all three charges after a trial that spanned nine months. The jury deadlocked on whether to sentence the defendant to death or life without parole on one count, and on the other count, they agreed to a sentence of life without parole. The defendant was sentenced to life without parole, 25 years to life on the second (deadlocked) murder, and 25 years on the rape. This conviction was affirmed on appeal (People v. Owens, 51 AD3d 1369 [4th Dept 2008]; leave denied 11 NY3d 740).

At a separate trial, the defendant was convicted of the remaining rape and sentenced to an additional 25 years. This conviction was affirmed on appeal (<u>People v. Owens</u>, 50 AD3d 1579 [4th Dept 2008]; *leave denied* 10 NY3d 938). I was lead counsel for all of the Owens litigation.

Copies of all published opinions I am aware of from these cases are attached.

c. How is prosecuting a capital case different from prosecuting a life sentence?

Response: Under the New York State death penalty provisions there are many differences. The New York Legislature, in reinstating the death penalty, enacted special protections for capital defendants, including, specially trained and appointed counsel, additional time for pretrial motions, individual *voir dire* of prospective jurors, and a direct appeal, as a matter of right, to the New York Court of Appeals. Under New York's death penalty sentencing scheme, a convicted defendant has a right to a separate sentencing proceeding before a jury and the right to presentation of mitigating factors by way of testimony. The United States Supreme Court has recognized the differences between cases where a defendant faces the death penalty and when life imprisonment is the maximum penalty. "[T]he penalty of death is qualitatively different from a sentence of imprisonment, however long.... Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." Woodson v. North Carolina, 428 U.S. 280, 305 (1976).

Westlaw. 23 A.D.3d 1116

Page 1

23 A.D.3d 1116 (Cite as: 23 A.D.3d 1116, 803 N.Y.S.2d 484)

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People v. Abdallah 23 A.D.3d 1116, 803 N.Y.S.2d 484 NY,2005.

23 A.D.3d 1116803 N.Y.S.2d 484, 2005 WL 3021212, 2005 N.Y. Slip Op. 08523

The People of the State of New York, Respondent

Foued Abdallah, Also Known as Torn Cruise, Appellant.

Supreme Court, Appellate Division, Fourth Department, New York

November 10, 2005

CITE TITLE AS: People v Abdallah

Appeal from a judgment of the Supreme Court, Monroe County (Donald J. Wisner, J.), rendered July 8, 1996. The judgment convicted defendant, upon his plea of guilty, of murder in the first degree.

It is hereby ordered that the judgment so appealed from he and the same hereby is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of murder in the first degree (Penal Law § 125.27 [1] [a] [vii]). Defendant failed to move to withdraw his plea or to vacate the judgment of conviction and thus failed to preserve for our review his contention that the plea allocution is factually insufficient (see People v Lopez, 71 NY2d 662, 665 [1988]). Contrary to defendant's contention, this case does not fall within the narrow exception to the preservation doctrine set forth in Lopez (see id. at 666). Present-Kehoe, J.P., Martoche, Pine, Lawton and Hayes, JJ.

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NY,2005. People v Abdallah

23 A.D.3d 1116

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Westlaw. 849 N.E.2d 974 6 N.Y.3d 845, 849 N.E.2d 974, 816 N.Y.S.2d 751 (Table) (Cite ns: 6 N.Y.3d 845)

Page 1

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(The decision of the Court of Appeals of New York is referenced in the North Eastern Reporter and New York Supplement in a table entitled "Applications for Leave to Appeal - Criminal.")

Court of Appeals of New York
People
v.
Foued Abdallah

April 21, 2006

4th Dept.: 23 A.D.3d 1116, 803 N.Y.S.2d 484 (Monroe)

Read, J. Denied.

N.Y. 2006. People v. Abdallah 6 N.Y.3d 845, 849 N.H.2d 974, 816 N.Y.S.2d 751 (Table)

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Page I

Slip Copy, 2010 WL 1707924 (W.D.N.Y.) (Cite as: 2010 WL 1707924 (W.D.N.Y.))

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Only the Westlaw citation is currently available.

United States District Court,
W.D. New York.
Tom CRUISE, A/K/A-Foued Abdallah, Petitioner,
v.
James CONWAY, Respondent.

No. 07-CV-6429T. April 26, 2010.

West KeySummaryCriminal Law 110 €== 1909

110 Criminal Law 110XXXI Counsel

110XXXI(C) Adequacy of Representation 110XXXI(C)2 Particular Cases and Issues 110k1908 Raising of Particular Defense or Contention

110k1909 k. In General. Most Cited

Cases

Defendant failed to show that defense counsel's failure to investigate or put forth an argument that the defendant lived at the victim's house was unreasonable, and therefore he could not show that he was provided ineffective assistance of counsel. Evidence showed that on the date of the murder the victim lived with her young son at the address where she was murdered, and there was nothing in the record to suggest that the defendant lived at the place of the murder. During the defendant's plea colloquy the defendant stated that he had never lived at the address of the murder; that he did not have a right or a key to enter the address; and that he broke into the address. An investigator testified that during an interview the defendant told him the address where he lived and that he had been at his own home on the day of the murder, U.S.C.A Const.Amend.;.

Stephen X. O'Brien, Wendy Evans Lehmann, Monroe County District Attorney, Rochester, NY, for Respondent. Tom Cruise, Attica, NY, pro se.

DECISION AND ORDER

MICHABL A. TELESCA, District Judge.

1. Introduction

*1 Pro se Petitioner Tom Cruise, a/k/a Foued Abdallah, ("Petitioner") has filed a timely petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging the constitutionality of his custody pursuant to a judgment entered July 8, 1996, in New York State, Supreme Court, Monroe County, convicting him, upon a plea of guilty, of Murder in the First Degree (N.Y. Penal Law ("Penal Law") § 125.27[1][a][vii]).

For the reasons stated below, habeas relief is denied and the petition is dismissed.

II. Factual Background and Procedural History

The charges arise out of the stabbing death of Petitioner's former girlfriend, Anna Rickards ("Rickards" or "the victim"), that occurred in the Town of Chili, New York on December 14, 1995. On that date, Petitioner broke into the victim's home, waited for her to arrive, and then attacked her with a knife when she and her young son returned. Rickards died from the stab wounds inflicted by the Petitioner.

On January 26, 1996, Petitioner was indicted by a Monroe County Grand Jury and charged with one count of murder in the first degree and two counts of burglary in the first degree. Shortly thereafter, the People filed a notice of intent to seek the death penalty if Petitioner was convicted of murder in the first degree. Plea Minutes [P.M.] 3.

On June 4, 1996, Petitioner appeared in court and plead guilty to murder in the first degree in satisfaction of all charges in the indictment. On July 8, 1996, Petitioner was sentenced, in accordance with the plea agreement, to a term of incarceration of life without parole. Sentencing Minutes [S.M.] 30.

Slip Copy, 2010 WL 1707924 (W.D.N.Y.) (Cite as: 2010 WL 1707924 (W.D.N.Y.))

Petitioner appealed his judgment of conviction to the Appellate Division, Fourth Department, which was unanimously affirmed on November 10, 2005. People v. Abdallah, 23 A.D.3d 1116, 803 N.Y.S.2d 484 (4th Dept.2005), Iv. denied, People v. Abdallah, 6 N.Y.3d 845, 816 N.Y.S.2d 751, 849 N.E.2d 974 (2006).

On or about May 16, 2006, Petitioner filed a New York Criminal Procedure Law ("CPL") § 440.10 motion to vacate the judgment of conviction, which was denied by the Supreme Court, Monroe County on October 5, 2006. See Decision and Order of the Supreme Court, Monroe County, Ind. # 1996-0053, dated 10/05/06 ("440.10 Dec."). Petitioner appealed the denial of the motion to the Appellate Division, Fourth Department, which was denied on June 11, 2007. See Decision of the Appellate Division, Fourth Department (Associate Justice Elizabeth W. Pine), Ind. No.1996-0053, dated 06/11/07.

This habeas petition followed. (Dkt.# 1)

III. General Principles Applicable to Habeas Re-

A. The AEDPA Standard of Review

Under the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), a federal court may grant habeas relief to a state prisoner only if a claim that was "adjudicated on the merits" in state court "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," 28 U .S.C. § 2254(d)(1), or if it "was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." § 2254(d)(2). A state court decision is "contrary to" clearly established federal law "if the state court arrives at a conclusion opposite to that reached by [the Supreme Court] on a question of law or if the state court decides a case differently than [the Supreme Court] has on a set of materially indistinguishable facts." Williams v. Taylor, 529 U.S. 362, 413, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000). The phrase, "clearly established Federal law, as determined by the Supreme Court of the United States," limits the law governing a habeas petitioner's claims to the holdings (not dicta) of the Supreme Court existing at the time of the relevant state-court decision. Williams, 529 U.S. at 412; accord Sevencan v. Herbert, 342 F.3d 69, 73-74 (2d Cir.2002), cert. denied, 540 U.S. 1197, 124 S.Ct. 1453, 158 L.Ed.2d 111 (2004).

*2 A state court decision is based on an "unreasonable application" of Supreme Court precedent if it correctly identified the governing legal rule, but applied it in an unreasonable manner to the facts of a particular case. Williams, 529 U.S. at 413; see also id. at 408-10, "[A] federal habeas court is not empowered to grant the writ just because, in its independent judgment, it would have decided the federal law question differently ." Aparicio v. Artuz, 269 F.3d 78, 94 (2d Cir.2001). Rather, "[t]he state court's application must reflect some additional increment of incorrectness such that it may be said to be unreasonable." Id. This increment "need not be great; otherwise, habeas relief would be limited to state court decisions so far off the mark as to suggest judicial incompetence." Francis S. v. Stone, 221 F.3d 100, 111 (2d Cir.2000) (internal quotation marks omitted).

Under AEDPA, "a determination of a factual issue made by a State court shall be presumed to be correct. The [petitioner] shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1); see also Parsad v. Greiner, 337 F.3d 175, 181 (2d Cir.2003) ("The presumption of correctness is particularly important when reviewing the trial court's assessment of witness credibility."), cert. denied sub nom. Parsad v. Fischer, 540 U.S. 1091, 124 S.Ct. 962, 157 L.Ed.2d 798 (2003). A state court's findings "will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state-court proceeding."

Miller-El v. Cockrell, 537 U.S. 322, 340, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003).

B. Exhaustion Requirement

"An application for a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court shall not be granted unless it appears that ... the applicant has exhausted the remedies available in the courts of the State...." 28 U.S.C. § 2254(b)(1)(A); see, e.g., O'Sullivan v. Boerckel, 526 U.S. 838, 843-44, 119 S.Ct. 1728, 144 L.Ed.2d 1 (1999); accord, e.g., Bossett v. Walker, 41 F.3d 825, 828 (2d Cir.1994), cert. denied, 514 U.S. 1054, 115 S.Ct. 1436, 131 L.Ed.2d 316 (1995) . "The exhaustion requirement is not satisfied unless the federal claim has been 'fairly presented' to the state courts." Daye v. Attorney General, 696 F.2d 186, 191 (2d Cir.1982) (en banc), cert. denied, 464 U.S. 1048, 104 S.Ct. 723, 79 L.Ed.2d 184 (1984).

C. The Adequate and Independent State Ground Doctrine

"It is now axiomatic that 'cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred.' " Dunham v. Travis, 313 F.3d 724, 729 (quoting Coleman v. Thompson, 501 U.S. 722, 750, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991)). "A habcas petitioner may bypass the independent and adequate state ground bar by demonstrating a constitutional violation that resulted in a fundamental miscarriage of justice, i.e., that he is actually innocent of the crime for which he has been convicted." Id. (citing Schlup v. Delo, 513 U.S. 298, 321, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995); Murray v. Carrier, 477 U.S. 478, 496, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986)).

IV. Petitioner's Claims

1. Insufficient Plea Allocution

*3 Specifically, Petitioner asserts that the plea colloquy negated elements of the crime, and that

the trial court failed to make factual inquiries to ensure that Petitioner was aware of such defects and still wished to enter a guilty plea. Petition [Pet.], Para. 11-13. Petitioner raised this claim on direct appeal, and it was rejected on state procedural grounds. See Abdullah, 23 A.D.3d at 1116, 803 N.Y.S.2d 484. Consequently, the claim is procedurally barred from habeas review by this Court.

A federal court may not review a question of federal law decided by a state court if the state court's decision rested on a state law ground, be it substantive or procedural, that is independent of the federal question and adequate to support the judgment. See Coleman, 50! U.S. at 729. Here, the state court relied on New York's preservation rule (codified at CPL § 470.05(2)) to deny Petitioner's claim because the issue had not been properly preserved for appellate review (i.e., Petitioner failed to move to withdraw his plea or move to vacate the judgment of conviction). The Second Circuit has determined that CPL § 470.05(2) is an independent and adequate state procedural ground. See Velasquez v. Leonardo, 898 F.2d 7, 9 (2d Cir.1990) ; see also Garcia v. Lewis, 188 F.3d 71, 79-82 (2d Cir.1999). The Appellate Division's reliance on CPL § 470.05(2) is an independent and adequate state ground, barring this Court's review of Petitioner's claim that he was deprived of due process of law because of an insufficient plea allocution.

A finding of procedural default will "bar habeas review of the federal claim, unless the habeas petitioner can show 'cause' for the default and 'prejudice attributable thereto,' or demonstrate that failure to consider the claim will result in a miscarriage of justice." Coleman, 501 U.S. at 749-50 (internal citations omitted); accord, e.g., Fama v. Commissioner of Corr. Servs., 235 F.3d 804, 809 (2d Cir.2000). Petitioner makes no showing of the requisite cause and prejudice necessary to overcome the procedural bar, nor has he demonstrated that this Court's failure to review the claim will result in a miscarriage of justice (i.e., that he is actually innocent). Accordingly, habeas relief is un-

available to Petitioner, and the claim is dismissed.

2. Coerced Guilty Plea

Petitioner argues that his guilty plea was obtained in violation of his rights under both the New York State and Federal Constitutions. He argues, inter alia, that he was coerced into pleading guilty out of fear of receiving the death penalty. Pet., Para. 12, 13, 38-47. Petitioner raised this claim in his CPL § 440.10 motion, and it was rejected on state procedural grounds. See 440.10 Dec., 3. Consequently, the claim is procedurally barred from habeas review by this Court.

FN1. Notably, the trial court rejected this claim, in the alternative, on the merits, finding that: "[t]he plea colloquy refutes defendant's self serving affidavit that he was coerced to plead guilty. The record amply demonstrates that defendant knowingly, intelligently, and voluntarily entered into the plea with the benefit of counsel. The arrangement to which the defendant agreed is both effective and enforceable." 440.10 Dec., 3 (internal citations and quotations omitted).

As discussed above, a federal court may not review a question of federal law decided by a state court if the state court's decision rested on a state law ground, be it substantive or procedural, that is independent of the federal question and adequate to support the judgment. See Coleman. 501 U.S. at 729. Here, the Supreme Court, Monroe County rejected Petitioner's claim pursuant to CPL § 440. 10(2)(c), finding that the claim was a matter of record that could have been raised at the time of Petitioner's direct appeal, but unjustifiably was not. See 440.10 Dec., 3; see also CPL § 440.10(2)(c) (the court must deny a motion to vacate a judgment when sufficient facts appear on the record underlying the judgment to have permitted adequate review of the issue on direct appeal). The Second Circuit has recognized CPL § 440.10(2)(c) as an adequate and independent state ground sufficient to preclude federal habeas review of a state-court defendant's claims. E.g., Sweet v. Bennett, 353 F.3d 135, 139-40 (2d Cir.2003); Reyes v. Keane, 118 F.3d 136, 139 (2d Cir.1997); Aparicio v. Artuz, 269 F.3d at 91(2d Cir.1991). The state court's reliance on CPL § 440.10(2)(c) is an independent and adequate state ground, barring this Court's review of Petitioner's claim that he was coerced into pleading guilty because of the threat of the death penalty.

*4 Petitioner makes no showing of the requisite cause and prejudice necessary to overcome the procedural bar, nor has he demonstrated that this Court's failure to review the claim will result in a miscarriage of justice (i.e., that he is actually innocent). See Coleman, 501 U.S. at 749-750. Accordingly, habeas relief is unavailable to Petitioner, and the claim is dismissed.

3. Ineffective Assistance of Counsel

Petitioner asserts that he was deprived of his federal constitutional right to effective assistance of counsel because his trial attorneys FN2 failed to investigate Petitioner's assertion that he lived at the victim's address and could not be guilty of burglary, and therefore of murder in the first degree, since he lived at the house he was accused of breaking into, at the time he broke in and killed Rickards. Pet., Para. 51, 52. Petitioner raised this claim in his CPL § 440.10 motion, and it was rejected on the merits. See 440.10 Dec., 3.

FN2. Petitioner was represented by the following three attorneys from the Capital Defender Office: Bill Easton, Esq., James Moreno, Esq., and Thomas Dunn, Esq.

It is well-settled that a petitioner claiming ineffective assistance of trial counsel must show that counsel's representation was fundamentally defective, and that, but for counsel's errors, there is a reasonable probability that the result of the proceeding would have been different. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Aparicio, 269 F.3d at 95. A petitioner seeking to establish constitutionally ineffective assistance of counsel must overcome a

"strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance ... [and] that, under the circumstances, the challenged action 'might be considered sound trial strategy.' " 1d. at 689 (quoting Michel v. Louisiana, 350 U.S. 91, 101, 76 S.Ct. 158, 100 L.Ed. 83 (1955)); see also, e.g., United States v. Jones, 918 F.2d 9, 11 (2d Cir. 1990) (holding that counsel's decisions should not be evaluated in hindsight). And, of course, counsel is "strongly presumed to have rendered adequate assistance and [to have] made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 689-90.

Here, Petitioner argues, unconvincingly, that he was denied effective assistance of counsel because none of the three attorneys who represented him from the Capital Defender Office investigated his assertion that he lived at the address where the murder occurred, and thus could not be guilty of burglarizing the Rickard home. This claim fails insomuch as it is entirely belied by the record. The record shows that, on the date of the murder (December 14, 1995), Rickards lived with her young son at 3502 Union Street in the Town of Chili, New York, P.M. 11. There is nothing in the record that suggests that Petitioner lived at 3502 Union Street on the date of the murder, Notably, at no time prior to or during the entry of the plea did Petitioner claim he lived at 3502 Union Street on the date of the murder.

During his plea colloquy, Petitioner stated the following: that he had never lived at 3502 Union Street; that he did not live at 3502 Union Street at the time of the murder; that he had no right to enter 3502 Union Street on December 14, 1995; that he did not have a key to 3502 Union Street; and that he broke into 3502 Union Street on December 14, 1995. Petitioner also stated, on the record, that his relationship with Rickards had ended "around November" of 1995. P.M. 10-12.

*5 These assertions were corroborated by other evidence. At a pre-plca hearing, for example, In-

vestigators Passmore and Crough, investigators with the Monroe County Sheriff's Office Major Crimes Unit ("Major Crimes Unit"), testified that, during a December 15, 1995 interview, Petitioner told them the following: that he lived at 7 Avanti Drive in Gates; that he had broken up with Rickards approximately two months prior to the date of the murder; and that he had been in his own home on the day of the crime. Hearing Minutes [H.M.] 139-147, 196, 204, 207. Additionally, Investigator Connors, another investigator with the Monroe County Sheriff's Office, who was called to the scene of the crime on the night of the murder, testified, at the pre-plea hearing, that he observed a "shattered and broken" door casing at the Rickard home. H.M. 123. Furthermore, at sentencing, the prosecutor noted the following: that on or about November 16, 1995, Petitioner had gone to the Rickard home to remove his property; that, at that time, he became so violent that Rickard called the police, who removed Petitioner and warned him not to go back; that three days later Petitioner broke into the Rickard home; that on the day before the murder, Petitioner and Rickards went to a prewarrant hearing for a menacing charge related to an earlier incident; that, as a result of that hearing, a warrant was issued for Petitioner's arrest and Petitioner was instructed not to go near the Rickard home or have contact with Rickard; that, on December 14, 1995, Petitioner unscrewed a motion light on an adjoining house which lit up the Rickard home, cut the phone lines, and kicked in her back door and broke the door frame, S.M. 19-21.

There is nothing in the record, or in the instant habeas petition, that refutes any of the evidence, as discussed above. Petitioner, rather disingenuously, points to his New York State driver's license to support his contention that he lived at 3502 Union Street at the time of the murder. See Petitioner's Abstract of Driving Record (Respt's Exhibit "J"). This document lists Petitioner's address as 3502 Union Street, but lists the application date for the ticense as January 18, 1994, nearly two years before the date of the murder. As Respondent cor-

rectly argues, it is irrelevant whether Petitioner ever lived at 3502 Union Street, and the record is clear that Petitioner did not live at 3502 Union Street on the date of the murder (December 14, 1995). See Resp't. Memo. of Law, 26.

Petitioner has failed to show that defense counsel's failure to investigate or put forth the argument that Petitioner lived at 3502 Union Street at the time of the murder was unreasonable, given the facts and circumstances of this case. Where there has been no error on the part of counsel, the outcome of the proceeding cannot have been affected. Accordingly, the Court cannot find that the trial court's determination of this issue was contrary to or an unreasonable application of Strickland. Habeas relief is not available to Petitioner and the claim is dismissed.

V. Conclusion

*6 For the reasons stated above, the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is denied, and the petition is dismissed. Because Petitioner has failed to make "a substantial showing of a denial of a constitutional right," 28 U.S.C. § 2253(c) (2), I decline to issue a certificate of appealability. See, e.g., Lucidore v. New York State Div. of Parole, 209 F.3d 107, 111-113 (2d Cir.2000). The Court also hereby certifies, pursuant to 28 U.S. C. § 1915(a)(3), that any appeal from this judgment would not be taken in good faith and therefore denies leave to appeal as a poor person. Coppedge v. United States, 369 U.S. 438, 82 S.Ct. 917, 8 L.Ed.2d 21 (1962).

Petitioner must file any notice of appeal with the Clerk's Office, United States District Court, Western District of New York, within thirty (30) days of the date of judgment in this action. Requests to proceed on appeal as a poor person must be filed with United States Court of Appeals for the Second Circuit in accordance with the requirements of Rule 24 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

W.D.N.Y.,2010. Cruise v. Conway Slip Copy, 2010 WL 1707924 (W.D.N.Y.)

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239 A.D.2d 965, 662 N.Y.S.2d 279, 1997 N.Y. Slip Op. 05272 (Cite as: 239 A.D.2d 965, 662 N.Y.S.2d 279)

Page 1

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Supreme Court, Appellate Division, Fourth Department, New York.

PEOPLE

v. Angel MATEO, Defendant.

May 30, 1997.

*965 MEMORANDUM:

We conclude that defendant has not on this application met his burden of demonstrating that there is "reasonable cause to believe that a fair and impartial trial cannot be had" in Monroe County (CPL 230.20[2]). If it develops during the voir dire that a fair and impartial jury cannot be drawn, an appropriate application may then be made. The relief requested in the application before us now is premature.

Motion for change of venue denied (see, People v. Scott, 197 A.D.2d 936, 604 N.Y.S.2d 843; see generally, People v. DiPiazza, 24 N.Y.2d 342, 300 N.Y.S.2d 545, 248 N.E.2d 412).

**280 GREEN, J.P., and LAWTON, CALLAHAN, DOERR and FALLON, JJ., concur.

N.Y.A.D. 4 Dept. 1997. People v. Mateo 239 A.D.2d 965, 662 N.Y.S.2d 279, 1997 N.Y. Slip Op. 05272

END OF DOCUMENT

Westlaw.

Page 1

175 Misc.2d 192, 664 N.Y.S.2d 981, 1997 N.Y. Slip Op. 97553 (Cite as: 175 Misc.2d 192, 664 N.Y.S.2d 981)

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County Court, Monroe County, New York.

The PEOPLE of the State of New York, Plaintiff,

Angel MATEO, Defendant.

No. 0914/96. Aug. 25, 1997.

Defendant, who was charged with three counts of first-degree murder, submitted defense applications. The County Court, Monroe County, Connell, J., held that: (1) felony murder subdivision of firstdegree murder statute was not unconstitutionally vague or overbroad; (2) felony murder subdivision of first-degree murder statute sufficiently narrowed class of people eligible for death penalty; (3) "serial killer" subdivision of first-degree murder statute was not applied retroactively; (4) "serial killer" subdivision of first-degree murder statute did not violate ex post facto clause; (5) count charging defendant with crime of first-degree murder for intentionally causing death of victim was not duplicitous, although defendant was charged as both shooter and commander; (6) grand jury presentation was not defective; (7) grand jury was not illegally constituted; (8) evidence was insufficient to establish first-degree murder under "serial killer" subdivision; (9) statute governing procedure for determining sentence upon conviction for first-degree murder was constitutional; (10) indictment that tracked language of statute was sufficient on its face; (11) search warrants were supported by probable cause; (12) items that were not enumerated in search warrants were properly seized pursuant to plain view doctrine; (13) offenses that were joined on basis of application of "serial killer" subdivision of first-degree murder statute had to be severed and tried separately from remaining counts in indictment; (14) defendant was not entitled to expanded bill of particulars; (15) instruction on sentencing consequences of jury deadlock was proper; (16) statute incorporating reverse Rosario discovery provision into sentencing proceeding in death eligible case was constitutional; (17) statute requiring defendant to prove mitigating factors at sentencing phase of case by preponderance of evidence was constitutional; (18) rigid application of rules of evidence at sentencing phase of case did not violate defendant's due process rights; and (19) statute requiring sentencing jury to weight aggravating and mitigating circumstances and then reach unanimous decision as to whether death is appropriate punishment was not unconstitutionally vague.

Motions denied.

West Headnotes

[1] Constitutional Law 92 52739

92 Constitutional Law

92VI Enforcement of Constitutional Provisions 92VI(A) Persons Entitled to Raise Constitutional Questions; Standing

92VI(A)5 Vagueness in General 92k738 Criminal Law 92k739 k. In general. Most Cited

Cases

(Formerly 92k42.2(1))

Since felony murder subdivision of first-degree murder statute involved no First Amendment concerns, defendant lacked standing to claim that subdivision was unconstitutionally vague on its face. U.S.C.A. Const.Amend. 1; McKinney's Penal Law § 125.27, subd. 1(a)(vii).

[2] Constitutional Law 92 €== 1800

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(H) Law Enforcement; Criminal

Conduct

92k1800 k. In general. Most Cited Cases (Formerly 92k90.1(1))

Statute can be challenged as being overbroad when it criminalizes speech.

[3] Constitutional Law 92 €== 859

92 Constitutional Law

92VI Enforcement of Constitutional Provisions 92VI(A) Persons Entitled to Raise Constitutional Questions; Standing

92VI(A)9 Freedom of Speech, Expression, and Press

92k858 Criminal Law

92k859 k. In general. Most Cited

Cases

(Formerly 92k42.2(1))

Since felony murder subdivision of first-degree murder statute did not involve or affect speech, defendant lacked standing to claim that subdivision was overbroad on its face and as applied to him. McKinney's Penal Law § 125.27, subd. 1(a)(vii).

[4] Constitutional Law 92 🖘 1008

92 Constitutional Law

92VI Enforcement of Constitutional Provisions 92VI(C) Determination of Constitutional Ouestions

92VI(C)3 Presumptions and Construction as to Constitutionality

92k1006 Particular Issues and Applica-

tions

92k1008 k. Penal statutes, Most

Cited Cases

(Formerly 92k48(4,1))

Constitutional Law 92 € 1033

92 Constitutional Law

92VI Enforcement of Constitutional Provisions 92VI(C) Determination of Constitutional Questions

92VI(C)4 Burden of Proof

92k1032 Particular Issues and Applica-

tions

92k1033 k. In general. Most Cited

Cases

(Formerly 92k48(4.1))

Penal statutes are presumed to be valid, and criminal defendant has heavy burden of demonstrat-

ing that statute is unconstitutional.

[5] Criminal Law 110 €==13.1

110 Criminal Law

1101 Nature and Elements of Crime

110k12 Statutory Provisions

110k13.1 k. Certainty and definiteness.

Most Cited Cases

(Formerly 110k13.1(1))

For statute not to be struck down as unconstitutionally vague, statute must provide sufficient notice of what conduct is prohibited and must not permit or encourage arbitrary law enforcement.

[6] Criminal Law 110 @= 13.1

110 Criminal Law

1101 Nature and Elements of Crime

110k12 Statutory Provisions

110k13.1 k. Certainty and definiteness.

Most Cited Cases

(Formerly 110k13.1(1))

Some forms of conduct which state may validly make subject to penal sanctions cannot, and need not, be defined with precision in statute.

[7] Homicide 203 4-576

203 Homicide

203III Homicide in Commission of or with Intent to Commit Other Unlawful Act

203III(A) In General

203k576 k. Constitutional and statutory provisions. Most Cited Cases

(Formerly 203k8)

Felony murder subdivision of first-degree murder statute was not unconstitutionally vague or overbroad, since it was sufficient to give person of ordinary intelligence fair notice that intentionally killing another individual in course of and in furtherance of felony was forbidden by statute and it did not permit or encourage arbitrary law enforcement. McKinney's Penal Law § 125.27, subd. I(a)(vii).

[8] Homicide 203 🗫 588

203 Homicide

203III Homicide in Commission of or with Intent to Commit Other Unlawful Act

203III(B) Murder

203k582 Predicate Offenses or Conduct 203k588 k. Causal relationship between offense and death. Most Cited Cases

(Formerly 203k18(1))

Felony murder does not embrace any killing that is coincidental with the felony, but instead is limited to those deaths caused by one of the felons in furtherance of their crime. McKinney's Penal Law § 125.27, subd. 1(a)(vii).

[9] Homicide 203 576

202 Hamisida

203HI Homicide in Commission of or with Intent to Commit Other Unlawful Act

203III(A) In General

203k576 k. Constitutional and statutory provisions. Most Cited Cases

(Formerly 203k8)

Statute providing that defendant who causes death of another in course of and in furtherance of certain felonies is guitty of second degree murder was not unconstitutionally vague. McKinney's Penal Law § 125,25, subd. 3.

[10] Homicide 203 \$\iii576

203 Homicide

203III Homicide in Commission of or with Intent to Commit Other Unlawful Act

203III(A) In General

203k576 k. Constitutional and statutory provisions. Most Cited Cases

(Formerly 203k8)

Phrase "commanded another person," as used in felony murder subdivision of first-degree murder statute, was not unconstitutionally vague, as it was sufficient to put defendant on notice that it was crime to order another person to intentionally cause death of another. McKinney's Penal Law § 125.27, subd. 1(a)(vii).

[11] Homicide 203 🗪 576

203 Homicide

203III Homicide in Commission of or with Intent to Commit Other Unlawful Act

203III(A) In General

203k576 k. Constitutional and statutory provisions, Most Cited Cases

(Formerly 203k8)

Felony murder subdivision of first-degree murder statute narrowed class of people eligible for death penalty, and, therefore, was not unconstitutional. McKinney's Penal Law § 125.27, subd. 1(a)(vii).

[12] Statutes 361 \$\infty\$ 278.2

361 Statutes

361VI Construction and Operation 361VI(D) Retroactivity

361k278.2 k. Nature and scope. Most

Cited Cases

(Formerly 92k188)

Statute is "retroactive" when it looks backward or contemplates the past, or relates back to previous transaction and gives it different legal effect from that which it had under law when it occurred.

[13] Statutes 361 €=== 278.5

361 Statutes

361VI Construction and Operation 361VI(D) Retroactivity 361k278.4 Prospective Construction 361k278.5 k. In general. Most Cited

Cases

(Formerly 361k263, 361k262)

Statutes 361 €==278.7

361 Statutes

361VI Construction and Operation 361VI(D) Retroactivity

361k278.7 k. Express retroactive provi-

sions. Most Cited Cases

(Formerly 361k263, 361k262)

Statutes are generally construed as prospective,

unless language of statute, either expressly or by necessary implication, requires that it be given retroactive construction.

[14] Homicide 203 \$== 540

203 Homicide

203II Murder

203k539 First Degree, Capital, or Aggravated Murder

203k540 k. In general. Most Cited Cases (Formerly 203k22(1))

Defendant cannot be deemed to have committed murder in first degree, under "serial killer" subdivision of first-degree murder statute, until after he or she commits third killing. McKinney's Penal Law § 125.27, subd. 1(a)(xi).

[15] Homicide 203 €---524

203 Homicide

203II Murder

203k521 Constitutional and Statutory Provisions

203k524 k. Retroactive operation. Most

Cited Cases

(Formerly 203k8)

Statutes 361 @== 278.29

361 Statutes

361VI Construction and Operation

361 VI(D) Retroactivity

361k278.24 Validity of Particular Retroactive Statutes

361k278,29 k. Criminal law. Most

Cited Cases

(Formerly 92k188)

"Serial killer" subdivision of first-degree murder statute was not applied retroactively to defendant, even though the two prior homicides necessary for the subdivision to apply occurred prior to its effective date. McKinney's Penal Law § 125.27, subd. I(a)(xi).

[16] Constitutional Law 92 €== 2816

92 Constitutional Law

92XXIII Ex Post Facto Prohibitions

92XXIII(B) Particular Issues and Applica-

tions

92k2814 Sentencing and Imprisonment 92k2816 k. Length of sentence, Most

Cited Cases

(Formerly 92k203)

Sentencing and Punishment 350H € 1218

350H Sentencing and Punishment

350HVI Habitual and Career Offenders

350HVI(A) In General

350Hk1215 Retroactive Operation

350Hk1218 k. Use for enhancement of offense or conviction occurring before effective date. Most Cited Cases

(Formerly 92k203)

Statutes which permit enhancement of punishment for present crime based upon prior crime, even where prior crime occurred before enactment of penalty-enhancing statute, are not encompassed in prohibition against ex post facto laws. U.S.C.A. Const. Art. 1, § 10, cl. 1.

[17] Constitutional Law 92 \$\infty\$2805

92 Constitutional Law

92XXIII Ex Post Facto Prohibitions

92XXIII(B) Particular Issues and Applica-

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92k2801 Particular Offenses

92k2805 k. Homicide. Most Cited

(Formerly 92k200, 203k8)

Homicide 203 €==>524

203 Homicide

203II Murder

203k521 Constitutional and Statutory Provi-

sions

203k524 k. Retroactive operation, Most

Cited Cases

(Formerly 203k8)

"Serial killer" subdivision of first-degree murder statute did not violate ex post facto clause of Federal Constitution; since intentional murder had always been a crime, statute did not punish as crime an act previously committed which was innocent when done. U.S.C.A. Const. Art. 1, § 10, cl. 1; McKinney's Penal Law § 125.27, subd. 1(a)(xi).

[18] Homicide 203 €== 540

203 Homicide

203H Murder

203k539 First Degree, Capital, or Aggravated Murder

203k540 k. In general. Most Cited Cases (Formerly 203k22(1))

Sentence under "serial killer" subdivision of first-degree murder statute is stiffened penalty for latest crime, which is considered to be an aggravated offense because it is a repetitive one. McKinney's Penal Law § 125.27, subd. 1(a)(xi).

[19] Indictment and Information 210 @=125(1)

210 Indictment and Information

210VI Joinder

210k125 Duplicity

210k125(1) k. In general. Most Cited

Cases

Each count of indictment can only charge one offense. McKinney's CPL § 200.30, subd. 1.

[20] Indictment and Information 210 €==125(2)

210 Indictment and Information

210VI Joinder

210k125 Duplicity

210k125(2) k. Propriety of joinder of several offenses in general. Most Cited Cases

Indictment must contain separate accusation or count addressed to each offense charged, if there be more than one, and plain concise factual statement in each count which asserts facts supporting every element of offense thereof with sufficient precision to clearly apprise defendant of conduct which is the subject of the accusation. McKinney's CPL §

200.30, subd. 2.

[21] Indictment and Information 210 5 125(1)

210 Indictment and Information

210VI Joinder

210k125 Duplicity

210k125(1) k. In general. Most Cited

Cases

Count in indictment which accuses defendant of more than one offense is duplicitous.

[22] Indictment and Information 210 \$\iiint\text{25}\$ 125(40)

210 Indictment and Information

210VI Joinder

210k125 Duplicity

210k125(40) k. Concurring liability of principal, accessory, and conspirator. Most Cited Cases

Count in indictment charging defendant with crime of first-degree felony murder was not duplicatious, even though defendant was charged as both shooter and commander; indictment and bill of particulars clearly set forth single theory of prosecution, that defendant intentionally caused death of person in course of and in furtherance of kidnapping, or acting with intent to cause death of person, commanded another person to intentionally cause his death. McKinney's Penal Law § 125.27, subd. 1(a)(vil); McKinney's CPL § 200.30, subd. 1.

[23] Indictment and Information 210 121.2(5)

210 Indictment and Information

210V Requisites and Sufficiency of Accusation 210k121 Bill of Particulars

210k121.2 Cases in Which Allowed

210k121.2(5) k. Homicide; assault.

Most Cited Cases

State did not have to specify whether defendant charged with first-degree felony murder was shooter or commander in its bill of particulars, since manner of prosecution was the same for both.

McKinney's Penal Law § 125.27, subd. 1(a)(vii).

[24] Indictment and Information 210 €-83

210 Indictment and Information

210V Requisites and Sufficiency of Accusation 210k83 k. Principals in second degree. Most Cited Cases

For charging purposes, distinction between principal and accomplice is academic, since there is no distinction between liability as principal and criminal culpability as accessory and status for which defendant is convicted has no bearing upon theory of the prosecution.

[25] Indictment and Information 210 2 10.1(6)

210 Indictment and Information

210II Finding and Filing of Indictment or Presentment

> 210k10 Finding of Grand Jury 210k10.1 Validity in General

210k10.1(6) k. Concurrence in findings. Most Cited Cases

Grand jury was not required to concur, when they voted on first-degree felony murder charges, as to defendant's status as principal or accomplice, since there was no legal distinction between liability as principal and criminal culpability as accomplice. McKinncy's Penal Law § 125.27, subd. 1(a)(vii).

[26] Homicide 203 @== 540

203 Homicide

203II Murder

203k539 First Degree, Capital, or Aggravated Murder

203k540 k. In general. Most Cited Cases (Formerly 203k22(1))

Charged crimes could be committed in "similar fashion," for purposes of "serial killer" subdivision of first-degree murder statute, even if defendant acted as accomplice in some of the crimes, but as principal in others. McKinney's Penal Law § 125.27, subd. 1(a)(xi).

[27] Indictment and Information 210 €== 125(41)

210 Indictment and Information

210VI Joinder.

210k125 Duplicity

210k125(41) k. Single act constituting two or more offenses. Most Cited Cases

Fact that grand jury could have found that defendant acted as both principal and accomplice when he caused deaths of several people did not make counts in indictment based on "serial killer" subdivision of first-degree murder statute duplicitous or impair integrity of grand jury. McKinney's Penal Law § 125.27, subd. 1(a)(xi).

[28] Indictment and Information 210 @ 83

210 Indictment and Information

210V Requisites and Sufficiency of Accusation 210k83 k. Principals in second degree. Most Cited Cases

Indictment charging either that defendant acted separately or jointly with others will sustain conviction based upon evidence of his participation in crime.

[29] Indictment and Information 210 €==71.2(2)

210 Indictment and Information

210V Requisites and Sufficiency of Accusation 210k71 Certainty and Particularity

210k71.2 Purpose of Requirement and Test of Compliance

210k71.2(2) k. Informing accused of nature of charge. Most Cited Cases

All that is required of an indictment is that it provide defendant with fair notice of charges against him; such notice is given by indictment which simply charges defendant with specified Penal Law violation whether prosecution's theory is that defendant is principal or an abettor.

[30] Jury 230 €==33(1.1)

230 Jury

230II Right to Trial by Jury

230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(1.1) k. Representation of community, in general. Most Cited Cases

Sixth Amendment requires that jury be selected from representative cross section of community. U.S.C.A. Const.Amend. 6.

[31] Jury 230 🔾 33(1.1)

230 Jury

230II Right to Trial by Jury
230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(1.1) k. Representation of community, in general. Most Cited Cases

To establish prima facie case for violation of fair cross section requirement under Sixth Amendment, defendant must show: (1) that group alleged to be excluded is distinctive group in community; (2) that representation of this group in venires from which juries are selected is not fair and reasonable in relation to number of persons in community; and (3) that this underrepresentation is due to systematic exclusion of group in jury selection process. U.S.C.A. Const.Amend. 6.

[32] Jury 230 @==33(1.1)

230 Jury

230H Right to Trial by Jury
230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(1.1) k. Representation of community, in general. Most Cited Cases

To show that group is distinct or cognizable under Sixth Amendment, defendant must show: (1) that group is defined and limited by some factor; (2) that common thread or basic similarity in attitude, ideas, or experience runs through group; and (3) that there is community of interest among members of group such that group's interests cannot be adequately represented if group is excluded from jury selection process. U.S.C.A. Const.Amend, 6.

[33] Jury 230 🔾==33(1.20)

230 Jury

230II Right to Trial by Jury
230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(1.2) Particular Groups, Inclu-

sion or Exclusion

230k33(1,20) k. Age, Most Cited

Cases

Young people grouped within arbitrary age range did not constitute "distinctive group" within community, for purposes of fair cross section requirement of Sixth Amendment, since this group did not share similar specific characteristics. U.S.C.A. Const.Amend. 6.

[34] Jury 230 5-33(1.10)

230 Jury

230II Right to Trial by Jury
230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(1.2) Particular Groups, Inclu-

sion or Exclusion

230k33(1.10) k. In general. Most

Cited Cases

Poor people did not constitute "distinctive group" within community, for purposes of fair cross section requirement of Sixth Amendment, since poor people were not defined and limited by some factor, such as race or sex, nor was there necessarily common thread or basic similarity in attitudes, ideas, experiences, or community of interests. U.S.C.A. Const.Amend. 6.

[35] Jury 230 🖘 33(1.1)

230 Jury

230II Right to Trial by Jury
230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(1.1) k. Representation of community, in general. Most Cited Cases

For group to be distinct and cognizable, for purposes of fair cross section requirement of Sixth Amendment, membership in that group cannot shift, or be arbitrarily selected or defined. U.S.C.A.

Const.Amend. 6.

[36] Jury 230 @==33(1.10)

230 Jury

230II Right to Trial by Jury
230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(1.2) Particular Groups, Inclusion or Exclusion

230k33(1.10) k. In general. Most

Cited Cases

Recent migrants to county did not constitute "distinctive group" within community, for purposes of fair cross section requirement of Sixth Amendment, since this group was not defined or limited by any factor, no common thread or similarity in attitudes and ideas existed among group, and there was no community of interests. U.S.C.A. Const.Amend. 6.

[37] Jury 230 €==33(1.10)

230 Jury

230H Right to Trial by Jury
230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(1.2) Particular Groups, Inclusion or Exclusion

230k33(1.10) k. In general. Most

Cited Cases

Jury 230 €==33(1.15)

230 Jury

230lf Right to Trial by Jury
230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(1.2) Particular Groups, Inclusion or Exclusion

230k33(1.15) k. Race. Most Cited

Cases

Jury 230 €==33(1.25)

230 Jury

230II Right to Trial by Jury

230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(1.2) Particular Groups, Inclusion or Exclusion

230k33(1.25) k. Sex. Most Cited

Cases

Statistics presented by defendant did not establish that representation of African Americans, Hispanics, and women in venires from which juries were selected was not fair and reasonable in relation to number of persons in community, accordingly, defendant failed to establish violation of fair cross section requirement of Sixth Amendment. U.S.C.A. Const.Amend. 6.

[38] Jury 230 € 33(1.10)

230 Jury

230H Right to Trial by Jury
230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(1.2) Particular Groups, Inclu-

sion or Exclusion

230k33(1.10) k. In general. Most

Cited Cases

Jury 230 €=>33(1.15)

230 Jury

230H Right to Trial by Jury
230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(1.2) Particular Groups, Inclu-

sion or Exclusion

230k33(1.15) k. Race. Most Cited

Cases

Jury 230 €==33(1.25)

230 Jury

230II Right to Trial by Jury
230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(1.2) Particular Groups, Incha-

sion or Exclusion

230k33(1.25) k. Sex. Most Cited

Cases

African Americans, Hispanics, and women were not systematically excluded from jury selection process, in violation of fair cross section requirement of Sixth Amendment, where jury pool was comprised of random and facially neutral lists of people who were registered to vote, paid taxes, had driver's licenses, and received state unemployment benefits, U.S.C.A. Const.Amend. 6.

[39] Jury 230 5=33(1.1)

230 Jury

230II Right to Trial by Jury 230k30 Denial or Infringement of Right 230k33 Constitution and Selection of Jury 230k33(1.1) k. Representation of community, in general. Most Cited Cases

For purposes of fair cross section requirement of Sixth Amendment, "systematic exclusion" means exclusion accomplished by means inherent in particular process used to select jury pool. U.S.C.A. Const.Amend. 6.

[40] Jury 230 €==33(1.1)

230 Jury

230II Right to Trial by Jury 230k30 Denial or Infringement of Right 230k33 Constitution and Selection of Jury 230k33(1.1) k. Representation of community, in general. Most Cited Cases

System is clearly open to all individuals, for purposes of fair cross section requirement of Sixth Amendment, as long as state does not prevent people from serving on jury or discriminate against any individuals. U.S.C.A. Const.Amend. 6.

[41] Constitutional Law 92 €== 919

92 Constitutional Law

92VI Enforcement of Constitutional Provisions 92VI(A) Persons Entitled to Raise Constitutional Questions; Standing

92VI(A)11 Equal Protection 92k918 Criminal Law

92k919 k. In general. Most Cited

(Formerly 92k42.2(2))

Defendant, who was Hispanic male, had standing to assert claim that intentional discriminatory exclusion of distinct and cognizable groups from grand jury service violated his right to equal protection. U.S.C.A. Const.Amends, 5, 14.

1421 Constitutional Law 92 5 3833

92 Constitutional Law

92XXVI Equal Protection 92XXVI(G) Juries

92k3833 k. Grand juries. Most Cited

Cases

(Formerly 92k221(5))

To establish prima facie violation of right to equal protection in connection with grand jury selection process, defendant must establish that: (1) recognizable and distinct classes have been singled out for different treatment under the laws, as written and applied; (2) substantial degree of underrepresentation of distinctive groups on grand juries has occurred over significant period of time; and (3) grand jury selection procedure is not racially neutral and is susceptible to abuse. U.S.C.A. Const. Amends, 5, 14.

[43] Constitutional Law 92 €=3833

92 Constitutional Law

92XXVI Equal Protection 92XXVI(G) Juries

92k3833 k. Grand juries. Most Cited

Cases

(Formerly 92k250.2(1))

Grand Jury 193 € 2.5

193 Grand Jury

193k2.5 k. Constitution in general; representation of community. Most Cited Cases

Grand Jury 193 6 39

193 Grand Jury

193k9 k. Summoning jurors in general. Most Cited Cases

Grand jury selection process did not violate defendant's equal protection rights, since it was fair and reasonable and did not discriminate against any distinct groups. U.S.C.A. Const.Amends. 5, 14.

[44] Homicide 203 @==1139

203 Homicide

203IX Evidence

203IX(G) Weight and Sufficiency

203k1138 First Degree, Capital, or Aggravated Murder

203k1139 k. In general. Most Cited

Cases

(Formerly 203k253(1))

Evidence that defendant was involved in four homicides with common element of death by gunshot was insufficient to establish "similar fashion" element of "serial killer" subdivision of first-degree murder statute. McKinney's Penal Law § 125.27, subd. 1(a)(xi).

[45] Sentencing and Punishment 350H €==1624

350H Sentencing and Punishment

350HVIII The Death Penalty

350HVIII(A) In General

350Hk1622 Validity of Statute or Regulatory Provision

350Hk1624 k. Provision authorizing death penalty. Most Cited Cases

(Formerly 203k351)

Statute governing procedure for determining sentence upon conviction for first-degree murder was not unconstitutional, since it genuinely narrowed class of persons eligible for death penalty and reasonably justified imposition of death sentence in those appropriate cases. McKinney's CPL § 400.27.

[46] Indictment and Information 210 (27)

210 Indictment and Information

210V Requisites and Sufficiency of Accusation 210k107 Statutory Offenses

210k110 Language of Statute

210k110(17) k. Homicide and felonious assaults. Most Cited Cases

Count of indictment charging defendant with first-degree felony murder tracked language of statute, and, therefore, was sufficient on its face, even though it allegedly failed to set forth factual allegations establishing how defendant commanded death of his victim. McKinney's Penal Law § 125.27, subd. 1(a)(vii).

[47] Searches and Seizures 349 @==117

349 Searches and Seizures

349II Warrants

349k115 Competency of Information;

Hearsay

349k117 k. Reliability or credibility; corroboration. Most Cited Cases

Applications for search warrants were sufficient to establish probable cause for issuance of the warrants, where knowledge of informant was grounded on her firsthand observations and her admissions to police investigator were not only corroborated by his knowledge of non-public aspects of investigation but were also statements made against her penal interest.

[48] Searches and Seizures 349 €==199

349 Searches and Seizures

349VI Judicial Review or Determination

349k199 k. Hearing; in camera inspection. Most Cited Cases

Claimed inconsistencies in statements made by informant did not justify evidentiary hearing regarding search warrants, since defendant's papers did not allege any facts supporting conclusion that perjurious statements were contained in police investigator's search warrant application.

[49] Searches and Seizures 349 €-149

349 Searches and Seizures

349III Execution and Return of Warrants 349k147 Scope of Search

349k149 k. Objects in plain view; inadvertent discovery. Most Cited Cases

Items not enumerated in search warrant were properly seized as evidence of crime seen in plain view by executing officers, who were legally in position to view those items during their search.

[50] Criminal Law 110 \$\infty\$ 620(6)

110 Criminal Law

110XX Trial

110XX(A) Preliminary Proceedings 110k620 Joint or Separate Trial of Separ-

ate Charges
110k620(3) Severance, Relief from
Joinder, and Separate Trial in General

110k620(6) k. Particular cases.

Most Cited Cases

Since "serial killer" subdivision of first-degree murder statute was only basis for joining certain offenses, and there was insufficient evidence before grand jury on this issue, offenses had to be severed and tried separately from remaining counts of indictment. McKinney's Penal Law § 125.27, subd. 1(a)(xi).

[51] Indictment and Information 210 € 121.2(5)

210 Indictment and Information

210V Requisites and Sufficiency of Accusation 210k121 Bill of Particulars 210k121.2 Cases in Which Allowed

210k121.2(5) k. Homicide; assault.

Most Cited Cases

Statutory provisions governing bills of particulars in criminal cases applied in death penalty case. McKinney's CPL § 200.95.

[52] Constitutional Law 92 €---4745

92 Constitutional Law 92XXVII Due Process 92XXVII(H) Criminal Law 92XXVII(H)6 Judgment and Sentence 92k4741 Capital Punishment; Death

Penalty

92k4745 k. Proceedings, Most

Cited Cases

(Formerly 92k268(11), 110k798(.5))

Sentencing and Punishment 350H 2 1780(3)

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(G) Proceedings
350HVIII(G)3 Hearing
350Hk1780 Conduct of Hearing
350Hk1780(3) k. Instructions. Most

Cited Cases

(Formerly 110k1213.7)

Jury instruction given by court in death penalty case, which stated that jury's failure to act unanimously could result in defendant's ultimate release from prison, did not result in more likely verdict of death, so as to deprive defendant of constitutional protections of Eighth and Fourteenth Amendments. U.S.C.A. Const.Amends. 8, 14; McKinney's CPL § 400.27, subd. 10.

[53] Criminal Law 110 € 627.5(3)

110 Criminal Law

110XX Trial

110XX(A) Preliminary Proceedings

110k627.5 Discovery Prior to and Incid-

ent to Tri

110k627.5(3) k. Prosecution's right to

disclosure. Most Cited Cases

Statute incorporating "reverse" Rosario discovery provision into sentencing proceeding in death eligible case did not unduly restrict defendant's ability to present complete and thorough defense or have unconstitutional chilling effect of defendant's sentencing phase strategy and presentation. McKinney's CPL § 400.27, subd. 14(a)(ii).

[54] Sentencing and Punishment 350H 5-1626

350H Sentencing and Punishment

350HVIII The Death Penalty 350HVIII(A) In General 350Hk1622 Validity of Statute or Regulatory Provision

350Hk1626 k. Procedure. Most Cited

Cases

Penalty

(Formerly 203k351)

Statute providing that burden of establishing mitigating factors in sentencing phase of capital murder case is on defendant and must be proven by preponderance of evidence was not unconstitutional, since it did not increase likelihood of erroneous application of death penalty. McKinney's CPL § 400.27, subd. 6.

[55] Constitutional Law 92 € 3744(2)

92 Constitutional Law
92XXVII Due Process
92XXVII(H) Criminal Law
92XXVII(H)6 Judgment and Sentence
92k4741 Capital Punishment; Death

92k4744 Matters Considered 92k4744(2) k, Evidence and wit-

nesses. Most Cited Cases (Formerly 92k270(2))

Sentencing and Punishment 350H 5-1751

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(G) Proceedings
350HVIII(G)2 Evidence
350Hk1751 k. Applicability of rules of
evidence in general. Most Cited Cases
(Formerly 203k358(1))

Sentencing and Punishment 350H 5-1766

350H Sentencing and Punishment

350HVIII The Death Penalty
350HVIII(G) Proceedings
350HVIII(G)2 Evidence
350Hkl755 Admissibility
350Hkl766 k. Hearsay. Most Cited

Cases

(Formerly 203k358(1))

Rigid application of rules of evidence and insistence upon reliable hearsay at sentencing phase of capital murder case would not deprive defendant of his state and federal constitutional rights to due process, since rules of evidence were intended to insure the introduction of only reliable and relevant information in legal proceeding. U.S.C.A. Const.Amends. 5, 14; McKinney's CPL § 400.27, subd. 6.

[56] Sentencing and Punishment 350H 6-46

350H Sentencing and Punishment
350HI Punishment in General
350HI(C) Factors or Purposes in General
350Hk46 k. Passion and prejudice. Most
Cited Cases
(Formerly 110k977(1))

It is burden of state to insure that process involved in sentencing is structured so as to guard against bias or caprice in sentencing.

[57] Sentencing and Punishment 350H €==1626

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(A) In General
350Hk1622 Validity of Statute or Regulatory Provision
350Hk1626 k. Procedure. Most Cited Cases

(Formerly 203k351)
Statute requiring sentencing jury in capital murder case to first weigh aggravating and mitigating circumstances and then reach unanimous decision as to whether death is appropriate punishment was not unconstitutionally vague, and provided adequate protection against imposition of death penalty in arbitrary and capricious manner. McKinney's CPL § 400.27, subd. 11(a).

**987*198 Kevin M. Doyle, Capital Defender (William T. Easton and Joseph T. Flood, of counsel), for defendant.

Howard R. Relin, District Attorney of Monroe County (Michael Green and Wendy Evans Lehmann, of counsel), for plaintiff.

JOHN J. CONNELL, Judge.

The headings and numbering in this Decision correspond as nearly as possible to those of the motion papers. To the extent that some issues are duplicated or overlap, there are some variances in that procedure.

The defendant is charged with three counts of Murder in the First Degree under Penal Law § 125.27(1)(a)(vii) and (xi). This Court has denied the following defense applications for substantially the same reasons stated in People v. Hale, 173 Misc.2d 140, 661 N.Y.S.2d 457: to apply heightened due process in death penalty cases; to strike the death penalty notice of intent on the grounds that the death penalty is unconstitutional facially and as applied; to dismiss on grounds that PL § 125.27(1)(a)(vii) is underinclusive; to reduce the Indictment based on double-counting of the victims' death; to declare CPL 320.10 unconstitutional under New York's Constitution; and to preclude death qualification of the jury before the guilt phase.

C. PL § 125.27(1)(a)(vii) Unconstitutionally Vague and Overbroad Claim

The defendant seeks to dismiss or reduce Count 10 of the Indictment on the grounds that Penal Law § 125.27(1)(a)(vii) is unconstitutionally vague and overbroad. The defendant argues that the term "in the course of ... and in furtherance of" has not been defined by the Court of Appeals, and has been given disparate definitions from lower courts. Therefore, this element under the statute is unconstitutionally vague and overbroad as a matter of federal and state due process. The defendant further asserts that the element "commanded another person" has never been defined by any court in New York State, and that this provision lacks a standard for determining what conduct satisfies the "commander" ele-

ment, *199 thereby making the statute unconstitutionally vague and overbroad. The defendant argues that due to this lack of clarity, the statute does not provide any way to distinguish those cases in which the death penalty may be imposed from those cases in which it may not.

[1][2][3] When the constitutionality of a statute is challenged on the ground of vagueness, typically that particular statute involves the 1st Amendment. Penal Law § 125.27(1)(a)(vii) involves no 1st Amendment concerns. Therefore, the defendant lacks standing to claim that the statute is unconstitutionally vague on its face. The defendant can only claim that the statute is unconstitutionally vague as applied to his case (United States v. Mazurie, 419 U.S. 544, 550, 95 S.Ct. 710, 714, 42 L.Bd.2d 706; **988People v. Nelson, 69 N.Y.2d 302, 308, 514 N.Y.S.2d 197, 506 N.E.2d 907). Similarly, a statute can be challenged as being overbroad when a particular statute criminalizes speech (New York v. Ferber, 458 U.S. 747, 766, 102 S.Ct. 3348, 3359, 73 L.Ed.2d 1113; People v. Hollman, 68 N.Y.2d 202, 208, 507 N.Y.S.2d 977, 500 N.E.2d 297). Penal Law § 125.27(1)(a)(vii) clearly does not involve or affect speech, rather it affects conduct. Murder during the course of a felony is clearly conduct that is not protected under the 1st Amendment. Therefore, the defendant lacks standing to claim the statute is overbroad on its face and as applied to him.

[4][5][6][7] It is well established that penal statutes are presumed to be valid, and a criminal defendant has a "heavy burden of demonstrating that a statute is unconstitutional...." (People v. Bright, 71 N.Y.2d 376, 382, 526 N.Y.S.2d 66, 520 N.E.2d 1355). In order for a statute not to be struck down as unconstitutionally vague, "the statute must provide sufficient notice of what conduct is prohibited ... [and] does not ... permit or encourage arbitrary ... law enforcement." Id. (People v. First Meridian Planning Corporation, 86 N.Y.2d 608, 621-622, 635 N.Y.S.2d 144, 658 N.E.2d 1017; People v. Nelson, 69 N.Y.2d 302, 307, 514 N.Y.S.2d 197, 506 N.E.2d 907 supra). However,

"this doctrine recognizes that some forms of conduct which a State may validly make subject to penal sanctions cannot, and need not, be defined with precision" (People v. Swartz, 130 A.D.2d 288, 290, 520 N.Y.S.2d 224 [3rd Dept.1987]; appeal denied 70 N.Y.2d 960, 525 N.Y.S.2d 844, 520 N.E.2d 562; United States v. Petrillo, 332 U.S. 1, 7-8, 67 S.Ct. 1538, 1541-1542, 91 L.Ed. 1877), The defendant has failed to meet the burden of demonstrating that the statute is unconstitutionally vague and overbroad. The statute makes a crime to intentionally kill another individual in the course of and in furtherance of a felony. The statute puts the defendant on notice that this type of conduct is prohibited. To conclude otherwise would be absurd. Penal Law § 125.27(1)(a)(vii) is "sufficiently definite by its terms so as 'to give a person of ordinary intelligence fair notice that his contemplated conduct *200 is forbidden by the statute'." (People v. Bright, supra at 382-383, 526 N.Y.S.2d 66, 520 N.E.2d 1355; quoting United States v. Harriss, 347 U.S. 612, 617, 74 S.Ct. 808, 812, 98 L.Ed. 989).

[8] Penal Law § 125.27(1)(a)(vii) does not permit or encourage arbitrary law enforcement. The phrase "in the course of and in furtherance of" limits the types of murders that may be prosecuted as first degree murders. The defendant can only be charged under this statute if he has committed an intentional murder "in the course of ... and in furtherance of" a felony. "In the course of" has been interpreted to be a durational requirement under the statute, i.e., that the murder be committed during the commission of a felony (People v. Lewis, 111 Misc.2d 682, 686, 444 N.Y.S.2d 1003; People v. Wood, 8 N.Y.2d 48, 201 N.Y.S.2d 328, 167 N.E.2d 736). "In furtherance of" has been interpreted as placing "a relation requirement between the felony and the homicide." (People v. Lewis, supra at 686, 444 N.Y.S.2d 1003). The statute expressly sets forth the specific enumerated felonies during which the intentional murder was committed or attempted to be committed, in order for the defendant to be charged under this statute, thereby limiting the felonies that qualify for felony murder. The defendant's conduct alleged in the Indictment tracks the language in the statute. There is nothing to suggest that he is being charged arbitrarily. Furthermore, "New York law is clear that felony murder does not embrace any killing that is coincidental with the felony, but instead is limited to those deaths caused by one of the felons in furtherance of their crime" (

People v. Hernandez, 82 N.Y.2d 309, 317, 604 N.Y.S.2d 524, 624 N.B.2d 661; People v. Ryan, 263 N.Y. 298, 189 N.E. 225).

[9] The defendant also seeks to dismiss or reduce Counts 3, 4, and 13 of the Indictment, which charge the defendant with felony murder under Penal Law § 125.25(3) on the grounds that this statute is unconstitutionally vague. Although no universal definition has been advanced by the Court of Appeals, or any lower courts, "in the course of and in furtherance of" has been an element of the felony murder statute under Penal Law § 125.25(3) for many years. Numerous **989 cases involving felony murder have been affirmed and the constitutionality of the statute has been determined (People v. Miller, 32 N.Y.2d 157, 344 N.Y.S.2d 342, 297 N.E.2d 85; People v. Bornholdt, 33 N.Y.2d 75, 350 N.Y.S.2d 369, 305 N.E.2d 461, cert. denied sub nom. Victory v. New York, 416 U.S. 905, 94 S.Ct. 1609, 40 L.Ed.2d 109; People v. Stokes, 88 N.Y.2d 618, 648 N.Y.S.2d 863, 671 N.E.2d 1260; People v. Britt, 212 A.D.2d 1034, 623 N.Y.S.2d 58 [4th Dept.1995]; People v. Howard, 241 A.D.2d 920, 661 N.Y.S.2d 386 [4th Dept.1997]). The statutory language of Penal Law § 125,27(1)(a)(vii) is virtually identical to the language contained in Penal Law § 125.25(3), and both statutes clearly encompass the felony murder doctrine. Since the Court of Appeals has not held this statute to *201 be unconstitutional, and has affirmed the language of § 125.25(3) numerous times, it can be inferred that both § 125.27(1)(a)(vii) and § 125.25(3) are clear and not vague. What makes § 125.27(1)(a)(vii) different from § 125,25(3) is that the former requires that the defendant intentionally cause the death of another individual in the course of and in furtherance of a felony, while the latter does not require

intentional conduct. The element of intent distinguishes those cases in which the death penalty may be imposed and those in which it may not.

[10] The defendant also challenges the phrase "commanded another person" as being unconstitutionally vague. The defendant's argument is unpersuasive. The term "command" has been used in the Penal Law for many years under § 20.00. This phrase, under Penal Law § 125.27(1)(a)(vii), limits the application of accessorial liability to those situations where an individual commands another person to intentionally cause the death of another individual.

Here the common sense meaning of "command" should be applied: "To direct, with authority. Power to dominate and control." (Black's Law Dictionary, 267 [6th ed. 1990]). The use of the phrase "commanded another person" under the statute is sufficient to put the defendant on notice that it is a crime to order another person to intentionally cause the death of Juan Rodriguez-Matos. This phrase also limits the type of conduct that can be charged under this statute by law enforcement personnel because of the limited application of accessorial liability.

Accordingly, the defendant's motion to dismiss or reduce Counts 3, 4, 10, and 13 of the Indictment on the grounds that Penal Law § 125.27(1)(a)(vii) and § 125.25(3) are unconstitutionally vague and overbroad is denied.

E. PL § 125.27(1)(a)(vil) and (xi) Unconstitutional Because They Fail to Narrow the Class of People Eligible for the Death Penalty

[11] Penal Law § 125.27(1)(a)(vii) narrows the class of people eligible for the death penalty for the reasons discussed in sections A through D and section V (omitted for purposes of publication). The language is sufficiently specific to have placed the defendant on notice that the offenses with which he is charged are criminal, and the language is sufficient to limit law enforcement *202 personnel from

arbitrarily charging the defendant under this statute.

The defendant's motion to dismiss or reduce Count 10 of the Indictment on the grounds that Penal Law § 125.27(1)(a)(vii) fails to narrow the class of people eligible for the death penalty is denied. The defendant's motion to dismiss or reduce Count 10 of the Indictment on the grounds that Penal Law § 125.27(1)(a)(vii) is unconstitutional because it is irrationally underinclusive, vague and overbroad, improperly double counts the victim's death, and fails to narrow the class of people eligible for the death penalty is denied.

III. RETROACTIVITY

The defendant seeks dismissal of Counts 11 and 12 of the Indictment, which charge him with Murder in the First Degree in violation of Penal Law § 125.27(1)(a)(xi). Pursuant to this section, a person is guilty of Murder in the First Degree when, with intent to cause the death of another person, he causes such death, and:

(xi) the defendant intentionally caused the death of two or more additional persons within the state in separate criminal transactions within a period of twenty-four months when committed in a similar fashion**990 or pursuant to a common scheme or plan; ...

Count 11 of the Indictment alleges that the defendant intentionally caused the death of Juan Rodriguez-Matos on November 2, 1996, and in addition, intentionally caused the deaths of Peter Holey on September 22, 1995, and Joangel Toro on August 6, 1995, in a similar fashion within twenty-four months prior to Matos' death. Count 12 of the Indictment alleges the same facts as Count 11, except this Count charges the defendant with the death of Jovanny Diaz on August 6, 1995. The effective date of Penal Law § 125.27(1)(a)(xi) was September 1, 1995.

The defendant seeks dismissal of Counts 11 and 12 on the grounds that the People are improperly applying Penal Law § 125.27(1)(a)(xi) retro-

actively. The defendant contends that by doing so, the People are charging him with Murder in the First Degree based partially upon acts that were allegedly committed prior to the effective date of the statute. The defendant argues he should only be prosecuted for the deaths of Joangol Toro and Joanny Diaz based on the law as it existed prior to September 1, 1995.

[12][13] A statute is determined to be retroactive when it "looks backward or contemplates the past, ... or ... relates back *203 to a previous transaction and gives it a different legal effect from that which it had under the law when it occurred" (Black's Law Dictionary, 684 [5th ed. 1979]). Generally, statutes are construed as prospective, unless the language of the statute, either expressly or by necessary implication, requires that it be given a retroactive construction." (McKinney's Consolidated Laws of New York, Book 1 Statutes, § 51(b) at 87). However, the Court of Appeals has held that "[a] statute is not retroactive ... when made to apply to future transactions, merely because such transactions relate to and are founded upon antecedent events" (People v. Weinberg, 83 N.Y.2d 262, 265, 609 N.Y.S.2d 155, 631 N.E.2d 97; quoting McKinney's Consolidated Laws of New York, Book 1 Statutes, § 51[a] at 87).

The Legislature made the effective date of Penal Law § 125.27(1)(a)(xi) September 1, 1995, and stated that "offenses committed prior to such date shall be governed by the provision of law in effect at the time the offense was committed" (1995 N.Y. Laws, Ch. 1 § 38). Therefore, it is clear the Legislature intended for this statute to be applied prospectively. It is equally clear that the People are applying the statute prospectively.

[14][15] Penal Law § 125.27(1)(a)(xi) requires proof of two additional killings as elements of first degree murder. Therefore, "a defendant cannot be deemed to have committed murder in the first degree until after he or she commits the third killing" (People v. Shulman, 172 Misc.2d 535, 658 N.Y.S.2d 794 [County Ct. Suffolk Co.1997]). The

defendant did not allegedly commit first degree murder until November 2, 1996, when Juan Rodriguez-Matos' death occurred, which was well after the date the statute became effective. The homicides of Joangel Toro and Jovanny Diaz, which occurred on August 6, 1995, were antecedent events that constitute aggravating factors or elements necessary to prove first degree murder. These homicides have not been given a different legal effect by this statute. Their legal effect is that they constitute charges for second degree murder reflected in Counts 1 and 2 of the Indictment, which is clearly the legal effect these acts possessed prior to the effective date of PL § 125.27(1)(a)(xi). The fact that these acts can be used as elements or antecedent events that occurred within 24 months prior to another intentional murder to prove first degree murder does not significantly alter their legal effect. The People are not seeking to enhance the defendant's possible punishment if convicted for the deaths of Joangel Toro and Jovanny Diaz because the People have charged the defendant with second degree marder for each victim. Therefore, if the *204 defendant is convicted, he would only be subject to the punishment requisite to those charges.

This case is analogous to People v. Weinberg, 83 N.Y.2d 262, 609 N.Y.S.2d 155, 631 N.E.2d 97, supra and its application is appropriate. In that case, the defendant was charged with "three misdemeanor counts of failure to file a tax return ... and one class **991 E felony count of repeated failure to file a tax return" under Tax Law § 1802. Id. at 265, 609 N.Y.S.2d 155, 631 N.E.2d 97. The defendant claimed that the Legislature did not intend for Tax Law § 1802 to be "applied retroactively to a repeated failure to file returns which occurred in part prior to the effective date of the statute." Id. The Court of Appeals rejected the defendant's argument and held that the statute was "not being retroactively applied ... in any true sense of the term" since the statute applied to future transactions which were "related to or founded upon antecedent events." Id. Furthermore, the Court determined that the defendant did not actually commit the § 1802

offense until he "failed to file his 1985 tax return by April 15, 1996, having then failed to file his returns for three consecutive years." *Id.* at 266, 609 N.Y.S.2d 155, 631 N.B.2d 97.

In the case at bar, Penal Law § 125.27(1)(a)(xi) applies to future transactions because the statute is clear that in order for the defendant to be charged with first degree murder, a third death, at a minimum, must occur after two or more deaths have occurred. Therefore, the future transaction would be the third death. The two or more earlier deaths that must occur are antecedent events which are elements of the first degree murder charge. The defendant can only be charged with first degree murder for this third death. Therefore, the defendant did not allegedly violate Penal Law § 125.27 (1)(a)(xi) until the third death (Juan Rodriguez-Matos) occurred on November 2, 1996.

Accordingly, that portion of the defendant's motion seeking dismissal of Counts 11 and 12 of the Indictment on retroactivity grounds is denied.

IV. EX POST FACTO

The defendant seeks dismissal of Counts 11 and 12 of the Indictment on the grounds that these charges violate Article I, § 10 of the United States Constitution, which prohibits states from enacting ex post facto laws.

Count 11 of the Indictment charges the defendant with intentionally causing the deaths of Juan Rodriguez-Matos, Peter Holley, and Joangel Toro under Penal Law § 125.27(1)(a)(xi). *205 Count 12 of the Indictment is almost identical to Count 11, except it charges the defendant with the death of Jovanny Diaz instead of Joangel Toro under Penal Law § 125.27(1)(a)(xi).

The defendant argues that because Counts 11 and 12 of the Indictment contemplate past acts by including prestatute crimes as elements of the offense, the prosecution is seeking to inflict a greater punishment upon the defendant than was permitted by law at the time those crimes were allegedly com-

mitted, thereby violating the ex post facto clause of the United States Constitution.

[16][17] In Collins v. Youngblood, 497 U.S. 37, 110 S.Ct. 2715, 111 L.Ed.2d 30, the United States Supreme Court held that the ex post facto clause prohibits any penal statute which "(1) punishes as a crime an act previously committed which was innocent when done ... (2) makes more burdensome the punishment for a crime after its commission, or ... (3) deprives one charged with crime of any defense available according to law at the time when the act was committed". Id. at 42, 110 S.Ct. at 2719. "[S]tatutes which permit the enhancement of punishment for a present crime based upon a prior crime, even where the prior crime occurred before enactment of the penalty-enhancing statute" are not encompassed in the above prohibitions (People v. Shulman, 172 Misc.2d, at 538, 658 N.Y.S.2d 794, supra; Gryger v. Burke, 334 U.S. 728, 68 S.Ct. 1256, 92 L.Ed. 1683; McDonald v. Massachusetts, 180 U.S. 311, 21 S.Ct. 389, 45 L.Ed. 542), Penal Law § 125.27(1)(a)(xi) does not violate the ex post facto clause of the United States Constitution. This statute does not punish as a crime an act previously committed which was innocent when done since intentional murder has always been a crime. Neither does this statute make more burdensome the punishment for a crime after its commission since once a violation of the statute has been proven, the sentence options are mandated by the statute, and are not enhanced or retroactively applied after a determination of an individual's guilt. The conduct for which a defendant is charged and convicted does not predate the effective date of the statute. **992 Furthermore, this statute does not deprive an individual charged with a crime of a defense that was available at the time the offense was allegedly com-

[18] Penal Law § 125.27(1)(a)(xi) enhances the punishment for the present crime of first degree murder based upon the prior two additional deaths, even though these deaths occurred before the enactment of this statute. Since there is no retroactive

application of the statute being applied in this case, as previously discussed, the two additional deaths are antecedent *206 events which enhance the punishment for the capital murder charge (People v. Weinberg, 83 N.Y.2d 262, 266, 609 N.Y.S.2d 155, 631 N.E.2d 97 supra). The defendant allegedly committed first degree murder on November 2, 1996, at the time of the alleged third killing (Juan Rodriguez-Matos). He is also charged with second degree murder pursuant to Penal Law § 125.25(1) in Counts 1 and 2 of the Indictment for the deaths of Joangel Toro and Jovanny Diaz. As such, the sentences that apply to each violation in the event of a conviction are the only ones that can be applied to each violation. Penal Law § 125.27(1)(a)(xi) does not bestow upon the defendant an additional penalty for the two predicate deaths. A sentence under this statute is for a "stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one" (People v. Morse, 62 N.Y.2d 205, 217-218, 476 N.Y.S.2d 505. 465 N.E.2d 12, appeal dismissed sub nom. Vega v. New York, 469 U.S. 1186, 105 S.Ct. 951, 83 L.Ed.2d 959; People v. Weinberg, 83 N.Y.2d 262, 267, 609 N.Y.S.2d 155, 631 N.E.2d 97, Gryger v. Burke, 334 U.S. 728, 732, 68 S.Ct. 1256, 1258-1259, 92 L.Ed. 1683, supra).

New Jersey has also applied this reasoning when deciding ex post facto challenges to capital crime statutes. State v. Erazo, 126 N.J. 112, 594 A.2d 232 [Supreme Ct. of N.J.1991], involved an ex post facto challenge to the capital murder statute which permits a jury to consider a defendant's prior murder conviction as an aggravating factor. The court held that "evidence of a prior murder is admissible under the statute not for the purpose of punishing the defendant for that murder, but to enable the jury to determine the appropriate sentence for the present murder" at the penalty phase of the trial (People v. Shulman, supra at 538; quoting State v. Erazo, 126 N.J., at 134, 594 A.2d at 243). Penal Law § 125.27(1)(a)(xi) requires proof of prior killings as elements of first degree murder at the guilt phase of the trial, thus there is still no ex post facto violation since both prior killings must also be proven.

Accordingly, that portion of the defendant's motion seeking dismissal of Counts 11 and 12 of the Indictment on ex post facto grounds is denied.

VIII. MOTION TO DISMISS COUNT 10 OF THE INDICTMENT AS DUPLICITOUS

The defendant seeks an Order to dismiss Count 10 of the Indictment as duplicitous since it charges him with the killing of Juan Rodriguez-Matos by shooting him with a gun and commanding another person to kill him. Count 10 charges the defendant with first degree murder pursuant to Penal Law § 125.27(1)(a)(vii). The defendant contends that since he is being *207 charged as both a shooter and a commander, Count 10 is duplicitous. The People have failed to specify in their Bill of Particulars whether they are pursuing a shooter or commander theory of prosecution; as a result, the defendant claims that he is prejudiced by this lack of notice, and unable to properly prepare a defense.

[19][20][21] Pursuant to Criminal Procedure Law § 200.30(1), each count of an indictment can only charge one offense (People v. Palaguachi, 210 A.D.2d 436, 620 N.Y.S.2d 429 [2nd Dept.1994]). Criminal Procedure Law § 200.30(2) provides that where a statute furnishes different ways of committing an offense under different subdivisions or paragraphs, a single count may only charge one offense pursuant to one paragraph or subdivision. An indictment must also contain "[a] separate accusation or count addressed to each offense charged, if there be more than one" and "[a] plain concise factual statement in each count which ... asserts facts supporting every element of the offense thereof with sufficient precision to clearly apprise the defendant ... of the conduct which is the **993 subject of the accusation" (People v. Keindl, 68 N.Y.2d 410, 417, 509 N.Y.S.2d 790, 502 N.E.2d 577; quoting CPL § 200.50(3) and (7)(a)). A count which accuses a defendant of more than one offense is duplicitous.

[22] Count 10 of the Indictment charges the de-

fendant with the crime of first degree nurder for intentionally causing the death of Juan Rodriguez-Matos. The section of the law under which the defendant is charged is contained in one paragraph and one subdivision, and charges only a single offense, involving a single death. The facts alleged in this Count only support one offense. Therefore, Count 10 of the Indictment does not violate the statutory requirements set forth under Criminal Procedure Law §§ 200.30(1), 200.30(2), 200.50(3) and 200.50 (7)(a), and is not duplicitous.

The defendant's claim that since he is being charged as both a shooter and a commander under Count 10, the Indictment is duplicitous, is without merit. The commander language contained in Penal Law § 125.27(1)(a)(vii) limits the application of Penal Law § 20.00 to that particular subdivision of the death penalty statute. The language, "commanded another person" is not an additional element to the offense of an intentional killing in the course of and in furtherance of a felony. Rather, under this statute, the People may charge the defendant as a principal, or in a limited situation, as an accomplice.

[23][24] The People do not have to specify whether the defendant is the shooter or the commander under Count 10, or in their Bill *208 of Particulars since the manner of prosecution is the same (People v. Mains, 178 A.D.2d 960, 578 N.Y.S.2d 750 [4th Dept.1991]). "For charging purposes, the distinction between principal and accomplice is academic" (People v. Rivera, 84 N.Y.2d 766, 771, 622 N.Y.S.2d 671, 646 N.E.2d 1098; quoting People v. Guidice, 83 N.Y.2d 630, 637, 612 N.Y.S.2d 350, 634 N.E.2d 951). This is because "[t]here is no distinction between liability as a principal and criminal culpability as an accessory and the status for which the defendant is convicted has no bearing upon the theory of the prosecution" (Rivera, supra at 768, 622 N.Y.S.2d 671, 646 N.E.2d 1098; quoting People v. Duncan, 46 N.Y.2d 74, 79-80, 412 N.Y.S.2d 833, 385 N.E.2d 572, cert. denied 442 U.S. 910, 99 S.Ct. 2823, 61 L.Ed.2d 275). Count 10 of the Indictment and the Bili of Particulars clearly set forth a single theory of prosecution, i.e., that the defendant intentionally caused the death of Juan Rodriguez-Matos in the course of and in furtherance of Kidnapping in the First Degree, or acting with the intent to cause the death of Juan Rodriguez-Matos, commanded another person to intentionally cause his death.

Accordingly, the defendant's motion to dismiss Count 10 of the Indictment on the ground that it is duplicitous is denied.

IX. DISMISSAL OF THE INDICTMENT BE-CAUSE THE DEFECTIVE PROCESS AND RESULTING DUPLICITOUS INDICTMENT DEMONSTRATE IMPAIRMENT OF THE IN-TEGRITY OF THE GRAND JURY.

[25] The defendant seeks an Order dismissing the Indictment on the grounds that the Grand Jury presentation was defective, since the grand jurors lacked proper guidance and constitutionally sound legal instructions when they reached their charging decision. The defendant claims that the Grand Jury proceedings were impaired since there is no guarantee that twelve grand jurors concurred when they voted on the first degree murder charges as to the defendant's status as principal or accomplice.

Count 10 of the Indictment charges the defendant with first degree murder pursuant to Penal Law § 125.27(1)(a)(vii) as both a principal and as an accomplice. As stated in VIII, supra, "there is no legal distinction between liability as a principal or criminal culpability as an accomplice" (People v. Rivera, supra at 769). Therefore, at least twelve grand jurors had to concur that there was sufficient evidence to indict the defendant for the murder of Juan Rodriguez-Matos, and sufficient instruction as to the definition of "commanded another person" under Penal Law § 125.27(1)(a)(vii). It is irrelevant whether some grand jurors voted **994 to indict the defendant based upon his *209 actions as a principal or as commander since there is no legal distinction between the two.

[26][27][28] The defendant further argues that the crimes charged in Counts 11 and 12 cannot be committed in a "similar fashion" if the defendant acted as an accomplice in some of the crimes, but as a principal in others. This argument is without merit for similar reasons. There is no distinction between liability as a principal or culpability as an accomplice. Although the Grand Jury could have found that the defendant acted as both principal and accomplice, that fact does not make Counts 11 and 12 duplicitous or impair the integrity of the Grand Jury. "An indictment charging either that [the] defendant acted separately or jointly with others will sustain a conviction based upon evidence of his participation in the crime." (People v. Gray, 187 A.D.2d 941, 591 N.Y.S.2d 280 [4th Dept.1992]; People v. Duncan, 46 N.Y.2d 74, 79-80, 412 N.Y.S.2d 833, 385 N.E.2d 572, cort. denied 442 U.S. 910, 99 S.Ct. 2823, 61 L.Ed.2d 275 supra).

[29] "All that is required of an indictment is that it provide [the] defendant with fair notice of the charges against him. Such notice is given by an indictment which simply charges the defendant with a specified Penal Law violation whether the prosecution's theory is that defendant is a principal or an abettor." (People v. Floyd, 115 A.D.2d 248, 496 N.Y.S.2d 167 [4th Dept.1985]; People v. Liccione, 63 A.D.2d 305, 312-313, 407 N.Y.S.2d 753 [4th Dept.1978], affd 50 N.Y.2d 850, 430 N.Y.S.2d 36, 407 N.E.2d 1333).

Accordingly, the defendant's motion to dismiss the Indictment on the grounds that the process was defective and resulted in a duplications Indictment, impairing the integrity of the Grand Jury, is denied.

XI. DISMISSAL OF THE INDICTMENT BE-CAUSE THE GRAND JURY WAS ILLEG-ALLY CONSTITUTED.

The defendant seeks an Order to dismiss the Indictment, pursuant to CPL 210.20 and 210.35 on the grounds that the Grand Jury was illegally constituted in violation of Article I, §§ 1, 2, 3, 4, 5, 6, 11, 12, and 14 of the New York Constitution, and the 5th, 6th, 8th, and 14th Amendments to the

United States Constitution, and Judiciary Law §§ 500-527. The defendant also requests that this Court order the Monroe County Commissioner of Jurors, the Monroe County District Attorney, and the State Office of Court Administration to permit defense counsel access to any and all records and materials related to Grand Jury selection in Monroe County from 1977 to the present. The defendant claims that access to this information is essential to allow him to fully substantiate his claim that distinctive and cognizable minority groups are underrepresented in the pool *210 from which grand jurors are chosen, and that Grand Jury selection was otherwise illegally constituted. The defendant bases this claim specifically on the fair cross section requirement under the 6th Amendment and equal protection clause of the 14th Amendment.

A. Fair Cross Section Requirement.

The defendant claims that cognizable and distinctive groups have been excluded in the Monroe County Grand Jury pool, thereby violating the fair cross section requirement of the 6th Amendment.

[30][31] The 6th Amendment requires that a jury be selected from a representative cross section of the community. See Taylor v. Louisiana, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975). In Duren v. Missouri, 439 U.S. 357, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979), the Supreme Court instituted a three-part test for jury challenges. In order to establish a prima facie case for violation of the fair cross section requirement under the 6th Amendment, the defendant must show: "(1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process." Id. at 364, 99 S.Ct. at 668.

**995 [32] In order to establish the first prong under the *Duren* test, the defendant claims that African-Americans, Hispanics, women, poor

people, recent migrants to Monroe County, and young people are all distinct groups within the community, and that these groups are underrepresented in the creation of the Grand Jury pool in Monroe County, In People v. Guzman, 60 N.Y.2d 403, 469 N.Y.S.2d 916, 457 N.E.2d 1143, cert. denied 466 U.S. 951, 104 S.Ct. 2155, 80 L.Ed.2d 541, the Court of Appeals held that a group is distinctive if that group constitutes "a substantial and identifiable segment of the community." Id. at 410, 469 N.Y.S.2d 916, 457 N.E.2d 1143. "[T]o show that a group is distinct or cognizable under the [S]ixth [A]mendment, a defendant must show: (1) that the group is defined and limited by some factor ... (2) that a common thread or basic similarity in attitude, ideas, or experience runs through the group; and (3) that there is a community of interest among members of the group such that the group's interests cannot be adequately represented if the group is excluded from the jury selection process." (Willis v. Kemp, 838 F.2d 1510, 1514 [11th Cir. 1988], cert. denied sub nom. Willis v. Zant. 489 U.S. 1059, 109 S.Ct. 1328, 103 L.Ed.2d 596; See also, Barber v. Ponte, 772 F.2d 982, 986 [1st Cir.1985], cert. denied 475 U.S. 1050, 106 S.Ct. 1272, 89 L.Ed.2d 580). In *211Peters v. Kiff, 407 U.S. 493, 92 S.Ct. 2163, 33 L.Ed.2d 83, the Supreme Court held that the exclusion of distinctive groups "deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented." Id. at 503-504, 92 S.Ct. at 2169.

[33] It has been established that African-Americans, Hispanics, and women do constitute distinct and cognizable groups within the community. (See e.g., People v. Guzman. 60 N.Y.2d 403, 469 N.Y.S.2d 916, 457 N.E.2d 1143, cert. denied 466 U.S. 951, 104 S.Ct. 2155, 80 L.Ed.2d 541 [Hispanics]; People v. Parks, 41 N.Y.2d 36, 390 N.Y.S.2d 848, 359 N.E.2d 358 [women]; People v. Hobson, 227 A.D.2d 643, 643 N.Y.S.2d 610 [2nd Dept.1996] [African-Americans]). However, young people grouped within an arbitrary age range do not constitute a distinctive group with-

in the community because this group does not share similar specific characteristics. People in an age group which spans eleven years (18-29) have many different attitudes, experiences, and ideas that differentiate one individual within that age range from another. The fact that young people share a common age or age range is insufficient to establish young people as a distinctive group in the community, absent some other common similarity or interests shared by all young people. Furthermore, several courts have held that young people do not constitute a distinctive group within the community, See e.g., Willis v. Kemp, supra; Brown v. Harris, 666 F.2d 782 (2nd Cir.1981), cert denied 456 U.S. 948, 102 S.Ct. 2017, 72 L.Ed.2d 472; Ford v. Seabold, 841 F.2d 677 (6th Cir.1988), cert denied 488 U.S. 928, 109 S.Ct. 315, 102 L.Ed.2d 334; People v. Hale, 173 Misc.2d 140, 661 N.Y.S.2d 457, supra [edited for publication] (Supreme Ct. Kings Co.1997).

[34][35] Similarly, poor people do not constitute a distinct group within the community. Poor people are not defined and limited by some factor, i.e., race or sex, nor is there necessarily a common thread or basic similarity in attitudes, ideas, experiences, or a community of interests. The defendant has failed to demonstrate any of these elements. Economic status, like age, is a flexible status, which would not render poor people a distinct, cognizable group since membership in that group may shift from day to day. For a group to be distinct and cognizable the membership in that group cannot shift, or be arbitrarily selected or defined. See United States v. Guzman, 337 F.Supp. 140, 143 (S.D.N.Y.1972), aff'd 468 F.2d 1245 (2nd Cir. 1972), cert. denied 410 U.S. 937, 93 S.Ct. 1397, 35 L.Ed.2d 602. Furthermore, several courts have held that individuals who maintain a certain economic status do not constitute a distinct group. (People v. Hale, supra (poor people do not constitute a distinct class]; United States v. Kleifgen, 557 F.2d 1293, 1296 (9th Cir.1977) *212 [unemployed not considered a distinct group]; United States v. Marcano, 508 F.Supp. 462, 469 (D.C.P.R.1980)

[persons of working class or lower socioeconomic status not a distinct group]; United States v. McDaniels, 370 F.Supp. 298, 307 (E.D. Louisiana 1973), aff'd **996509 F.2d 825 (5th Cir.1975), cert. denied 423 U.S. 857, 96 S.Ct. 109, 46 L.Ed.2d 83 [finding that the poor, as defined by the United States government poverty criteria, do not constitute a distinctive group]).

The defendant relies on People v. Miller, 170 Misc.2d 367, 646 N.Y.S.2d 965 [Rochester City Ct.1996], People v. Prim, 47 A.D.2d 409, 366 N.Y.S.2d 726, modified 40 N.Y.2d 946, 390 N.Y.S.2d 407, 358 N.E.2d 1033, and Thiel v. Southern Pacific Company, 328 U.S. 217, 66 S.Ct. 984, 90 L.Ed. 1181 for the proposition that poor people constitute a distinctive group within the meaning of the New York and Federal Constitutions. The defendant's application of these cases is incorrect. In Prim, the defendant challenged the entire jury panel for similar reasons. The court ordered a hearing without deciding the merits of the appeal since the law which existed at the time of the defendant's trial allowed women to be exempt from jury service. Taylor v. Louisiana, supra, made such exemptions unconstitutional. The court did not hold that poor people constitute a distinct group within the community. Miller and Thiel held that discrimination against individuals living below the poverty level in the manner in which jurors were selected was unjustified. Neither case held that poor people constitute a distinctive group within the community.

[36] The defendant has failed to demonstrate that recent migrants to Monroe County constitute a distinct group within the community. He has brought forward no evidence to establish that this group is defined or limited by some factor, or that a common thread or similarity in attitudes and ideas exist among this group, or that there is a community of interests.

Clearly, young people, poor people, and recent migrants to Monroe County cannot be prohibited by the state from participating in the jury process. "However, a distinction must be made between 'mere statistical imbalances' and true discrimination." (People v. Hale, 173 Misc.2d 140, 661 N.Y.S.2d 457 [Supreme Ct. Kings Co.1997]; quoting Barber v. Ponte, 772 F.2d 982, 1000 supra). "Unless one is prepared to say that there is an affirmative constitutional duty to produce a true cross-section on the venire for every imaginable group that exists in our complex society, something which no court has even come close to holding, we should avoid the overwhelming problems and the sterile solutions that will result from attempting to *213 subdivide a continuum of ages [and economic status] into distinctive groups." Id.

Since this Court has found that African-Americans, Hispanics, and women are distinct and cognizable groups within the community, the second and third prongs of the *Duren* test must be analyzed only in regard to these groups.

[37] The defendant claims that underrepresentation of African-Americans, Hispanics, and women is unfair and unreasonable in relation to the number of such persons in Monroe County. To prove this second prong of the *Duren* test, the defendant relies on statistics to demonstrate that the source lists used to formulate jury pools in Monroe County are underrepresentative of these distinct groups. In reviewing the statistical analysis supplied by the defendant, this Court finds that these statistics are not persuasive to establish the second prong of the *Duren* test, or to warrant dismissal of the Indict-

[38][39] The defendant has also failed to establish that African-Americans, Hispanics, and women are systematically excluded from the jury selection process. "Systematic exclusion means exclusion accomplished by a means 'inherent in the particular jury selection process utilized.' " (People v. Hale, supra; quoting People v. Guzman, supra, 60 N.Y.2d, at 411, 469 N.Y.S.2d 916, 457 N.E.2d 1143). The exclusion of a distinctive and cognizable group "must have been caused by the process used to select the jury pool." (People v. Hale, supra 173 Misc.2d 140, 661 N.Y.S.2d 457). The jury pool

in Monroe County is comprised of random and facially neutral lists of people who are registered to vote, pay taxes, have a driver's license, and, since April of 1995, receive state unemployment benefits. The defendant claims that since members of a distinct group within the community are underrepresented on the source lists in proportion to their presence in the community, the use of these lists to comprise**997 the jury pools constitutes systematic exclusion. This argument is unpersuasive. The behavior of members of these groups is unrelated and irrelevant to any state action, and does not prove that these groups are being systematically excluded. The fact that "some groups may not vote in the same numbers as others, or may not have as many licensed drivers as others, does not lead to the conclusion that the facially neutral and random system used in [Monroe County] causes *214 systematic exclusion of these groups." (People v. Hale, supra, 173 Misc.2d 140, 661 N.Y.S.2d 457; see also, People v. Betancourt, 153 A.D.2d 750, 753-754, 545 N.Y.S.2d 207 [2nd Dept.1989]; People v. Gregory ZZ, 134 A.D.2d 814, 815, 521 N.Y.S.2d 873 [3rd Dept,1987]; People v. Cowan, 111 A.D.2d 343, 344, 489 N.Y.S.2d 325 [2nd Dept.1985]).

[40] Clearly, a true cross section of the community is virtually unattainable since individuals do not serve on a jury for a wide variety of reasons, such as physical impairments, hearing impairments, and difficulty understanding the English language. The system is clearly open to all individuals, as long as the state does not prevent people from serving on a jury or discriminate against any individuals. (People v. Hale, supra; Barber v. Ponte, 772 F.2d 982, 997 (1st Cir.1985, supra)). The process used to select Grand Jurors in Monroe County involves facially neutral and random selection from a variety of nondiscriminatory source lists. The process is designed to achieve a fair cross section of the community to the greatest extent possible, and does not discriminate against any distinctive and cognizable group within the community. Therefore, the defendant has failed to establish a prima facie

violation of his right to a fair cross section under the 6th Amendment.

B. Equal Protection

The defendant also challenges the Grand Jury selection process on the grounds that the intentional discriminatory exclusion of distinct and cognizable groups from Grand Jury service violates his right to equal protection under the 5th and 14th Amendments. The People claim that the defendant is not a member of any distinct or cognizable group, and lacks standing to assert this claim.

[41] Clearly, the defendant is a Hispanic male, and Hispanics have been identified as a distinct and cognizable group. Therefore, the defendant does have standing to assert this claim. However, the defendant's claim is without merit.

[42][43] In order to establish a prima facie violation of the right to equal protection, the defendant must establish that: (1) recognizable and distinct classes have been singled out for different treatment under the laws, as written and applied; (2) a substantial degree of underrepresentation of distinctive groups on grand juries has occurred over a significant period of time; and (3) the Grand Jury selection procedure is not racially *215 neutral and is susceptible to abuse. (Castaneda v. Partida, 430 U.S. 482, 494, 97 S.Ct. 1272, 1280, 51 L.Ed.2d 498; People v. Guzman, supra, 60 N.Y.2d 403, 469 N.Y.S.2d 916, 457 N.E.2d 1143). As previously stated, the defendant has failed to establish that the Grand Jury selection process utilized in Monroe County is discriminatory or systematically excludes any distinct or cognizable groups. The selection process used in Monroe County is fair and reasonable and does not discriminate against any distinct groups. There is no evidence of substantial underrepresentation of a distinct and cognizable group over a significant period of time in Monroe County. The defendant has failed to satisfy the elements required in order to establish a prima facie violation of his right to equal protection.

Accordingly, the defendant's motion to dismiss

the Indictment, and his request for records related to Grand Jury selection in Monroe County, as well as an evidentiary hearing is denied in all respects.

MOTION TO DISMISS COUNTS 11 AND 12 OF THE INDICTMENT PURSUANT TO CPL ARTICLE 210 (AM-8)

MOTION TO DECLARE PENAL LAW §
125.27(1)(a)(xi), THE "SERIAL KILLER" AG-GRAVATING FACTOR, UNCONSTITUTION-AL, FACIALLY AND AS APPLIED, AND TO PRECLUDE ITS APPLICATION AT BAR (AM-9)

The defendant seeks an order declaring Penal Law § 125.27(1)(a)(xi), the "serial killer" aggravating factor, unconstitutional as **998 applied in this case and on its face. The statute must be presumed constitutional and valid (Weems v. United States. 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793). The defendant shoulders the burden to prove beyond a reasonable doubt that it is not (People v. Scalza, 76 N.Y.2d 604, 562 N.Y.S.2d 14, 563 N.E.2d 705). The relevant portion of this statute states that "the defendant intentionally caused the death of two or more additional persons within the state in separate criminal transactions within a period of twenty-four months when committed in a similar fashion or pursuant to a common scheme or plan", (Penal Law § 125.27[1][a][xi]). The People have elected to proceed on the theory that the defendant acted in a similar fashion. It is the defendant's position that similar fashion is unconstitutionally vague and overbroad under the 4th, 5th, 6th, 8th and 14th Amendments to the United States Constitution; Article I, Sections 1, 2, 3, 4, 5, 6, 11, 12 and t4 of the New York State Constitution; Civil Rights Law Section 13; and Judiciary Law Section 500.

Neither the death penalty tegislation, nor the Penal Law, nor the Criminal Procedure Law, nor the Criminal Jury *216 Instructions, defines the term in a similar fashion. The defendant claims, therefore, that the phrase is standardless and fails to adequately inform a jury what they must find in or-

der to determine if the People have established the necessary serial killer aggravating factor which narrows the class of persons eligible for the death penalty under this subdivision (Zant v. Stephens, 462 U.S. 862, 103 S.Ct. 2733, 77 L.Ed.2d 235). Understandably, in instructing the Grand Jury, the prosecutor presented no definition of similar fashion or pursuant to a common scheme or plan.

Because of the lack of legislative definition of this term, reference to public pronouncements to determine legislative intent is helpful. According to the memorandum of the Assembly Codes Committee of March 6, 1995 (at 1, 3), this subdivision was directed at "intentional murders that qualify under the statute ... (as) serial murders". Governor Pataki described this section as applicable to serial murderers in his March 7, 1995 approval memorandum. Therefore, it appears clear that this subdivision reflects an executive and legislative intent to deal with serial murders.

The enactment draws a distinction between murders committed in a similar fashion and those committed pursuant to a common scheme or plan. This presumably is not a distinction without a difference. Analogous distinction has been drawn in law between modus operandi and common scheme or plan. Modus operandi refers to the method used in the commission of the crime. When crimes have a similar modus operandi, their method of commission is said to follow a repetitive pattern (People v. Fiore, 34 N.Y.2d 81, 87, 356 N.Y.S.2d 38, 312 N.E.2d 174; People v. Beam, 57 N.Y.2d 241, 253, 455 N.Y.S.2d 575, 441 N.E.2d 1093), The determination of modus operandi depends on the totality of the circumstances and the degree of similarity in the method of commission. When a series of crimes are committed in a similar fashion, they have a similar modus operandi (Black's Law Dictionary, 1004, 6th ed. 1990). A pattern is a "reliable sample of traits, acts or other observable features" (Black's Law Dictionary, 1127, 6th ed. 1990). Similar means "nearly corresponding; resembling in many respects; somewhat like; having a general likeness,

although allowing for some degree of difference" (
Black's Law Dictionary, 1383, 6th ed. 1990).
"Similarity is not identity, but resemblance between things" (United States v. Raynor, 302 U.S. 540, 547, 58 S.Ct. 353, 356, 82 L.Bd. 413). In discussing the evidentiary standard for proof of other crimes, Wigmore calls the concept similarity a "flexible principle" and adds: "[I]t is just this requirement of similarity which leaves so much room for difference of opinion, and accounts for the variances *217 of rulings in the different jurisdictions and even in the same jurisdiction and in cases of the same offense" (2 Wigmore Evidence, § 302, at 246 [Chadbourn rev.ed. 1979]).

The People maintain that similar "includes a spectrum of meanings between the poles of same and different" (Answering Affirmation, AM-9). The breadth of distance between same and different and the bewildering variances of rulings as described by Wigmore make it obvious that clear and objective standards providing specific and detailed guidance to a jury is questionable given the lack **999 of clarity in this statute (Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859; Proffitt v. Florida, 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913; Godfrev v. Georgia, 446 U.S. 420. 100 S.Ct. 1759, 64 L.Ed.2d 398). Not lost on this Court is the significant absence in the Practice Commentaries to Penal Law § 125.27(1)(a)(xi) and the Criminal Jury Instructions of a recommended definition of similar fashion.

The People urge that the term similar fashion has a commonsense core of meaning (Jurek v. Texas, 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929) and is, therefore, easily understood by defendants and juries. The People also contend that the term serial killer does not require any more than a showing of a consecutive number of killings. Certainly the context in which the statute was debated and passed by the Legislature, signed into law by the Governor and promoted by those two branches of government was aimed at protecting the public from the Son of Sam, Ted Bundy and Arthur Shaw-

cross-type serial killers. They are generally defined as persons who commit several homicides, separated in time and frequently in different geographic locations. Most are serial sexual killers who are compelled to exercise absolute control, both physical and mental, before inflicting torture, pain and ultimate death. The manner in which death is inflicted is frequently characterized by a ritualistic signature aspect, i.e. mutilation, cannibalism, sexual contact. Pirearms are the least common weapons used by such serial killers. Finally, the crime scenes of the killers tend to be similar, using the same method of killing and similar crime scene arrangements (Blinder Psychiatry in the Everyday Practice of Law, 3rd ed., Clark, Boardman, Callahan Cumulative Supplement, August, 1996).

[44] In alleging that the four murders set forth in Counts 11 & 12 were committed in a similar fashion, the People advance these similarities: All involved young men, shot with firearms to the left aide of the head, on the west side of the City of Rochester, and in a cold-blooded fashion.

However, as the People also acknowledge, dissimilarities are important in analyzing the serial murder allegation; Victims: *218 One victim was a 16 year old African-American male. Three were 19to 20-year old male Hispanics. Instrumentalities: a .45 caliber handgun, a .357 caliber handgun, a .25 caliber handgun and a 12-gauge shotgun. Motives: One contract shooting that began as a kneecapping and resulted in a homicide; one unplanned victim who was a companion of the contract shooting victim; one drive-by shooting as revenge for an earlier robbery committed by the victim and one shooting driven by the defendant's desire to locate a former girlfriend, Defendant as Shooter: The defendant is alleged to be the shooter of the companion to the contract shooting victim and in the drive-by shooting. An unindicted accomplice is alleged to have shot the contract victim. The People are unsure if the defendant shot or commanded the shooting of the 4th victim. Wounds: One with shotgun wounds to the neck in the drive-by; one with multiple gun-

shot wounds to the head, abdomen, chest and neck; one with multiple gunshot wounds to the head, chest and hip; and one with a single shot to the head whose head thereafter was covered with a plastic bag. Location. Two on a public sidewalk during the same incident; one as he sat in a car on a public street and one in the defendant's basement while handcuffed and blindfolded.

The People argue that the common element of death by gunshot makes these four homicides serial killings of a similar fashion. They ask this Court to reject a Molineux standard (People v. Molineux, 168 N.Y. 264, 61 N.E. 286) in interpreting similar fashion and accept a spectrum of meanings between the poles of same and different.

The reliance of the People on People v. Condon, 26 N.Y.2d 139, 309 N.Y.S.2d 152, 257 N.E.2d 615 to support their position that similarity should not be confused with modus operandi is questionable. The Condon court specifically noted that the signature-type crimes of a serial killer (i.e. Jack the Ripper) could establish such unique characteristics that proof of similar acts of the defendant would be probative of the fact that he committed the crime alleged.

There is nothing so unique, ritualistic, signature-like about these homicides that would support the Grand Jury's decision to indict **1000 the defendant under this statute. Even the geographical similarities of the homicide locations proffered by the People are not obvious from a review of the Grand Jury minutes.

To accept the examples of similarity presented by the People, a person who shoots the requisite number of victims within the city limits during the prescribed period, thereby causing their *219 death, would fit the definition of a serial killer for purposes of this statute. Clearly, the Legislature did not intend such a result.

Under the facts of this case, viewed in the light most favorable to the People (People v.

Mikuszewski, 73 N.Y.2d 407, 541 N.Y.S.2d 196, 538 N.E.2d 1017), the evidence before the Grand Jury was insufficient to establish the similar fashion element of the statute. In fact, the statute was read to the Grand Jury with no distinction inade between similar fashion and common scheme or plan. The People, in their response to the defendant's Request for a Bill of Particulars, elected to proceed on the theory that the homicides were committed in a similar fashion.

Whether the Grand Jury voted to indict on similar fashion or common scheme or plan is, therefore, not clear from the Grand Jury minutes. The two concepts are quite different from each other as both sides agree. There was, however, insufficient evidence presented to support a theory of Murder in the First Degree under either theory.

Accordingly, the defendant's motion to dismiss Counts 11 and 12 as not being supported by legally sufficient evidence is in all respects granted.

While the vagueness of the law concerning similar fashion underscores "several difficult issues that remain to be resolved in its application" (When the Cheering Stopped: An Overview and Analysis of New York's Death Penalty Legislation, 17 Pace L.Rev. 41, 85 [1996]), it does not appear to this Court that this portion of the statute should be struck down on constitutional grounds by a trial level judge (McKinney's Cons.Laws of N.Y., Book 1, Statutes § 150; People v. Smith, 63 N.Y.2d 41, 479 N.Y.S,2d 706, 468 N.E.2d 879; People v. Davis. 43 N.Y.2d 17, 400 N.Y.S.2d 735, 371 N.E.2d 456, cert. denied 435 U.S. 998, 98 S.Ct. 1653, 56 L.Ed.2d 88; People v. McIntosh, 173 Misc.2d 727, 662 N.Y.S.2d 214 [County Ct. Dutchess County 1997]) at this point in the proceedings of this case.

Since this Court is dismissing Counts 11 and 12 on insufficiency of the Grand Jury minutes, this Court need not reach the constitutional issues raised by the defendant in this and other motions nor the multiplicitous issues raised by the defendant in AM-7.

Pursuant to Article 210 of the Criminal Procedure Law, various defense motions have been made to inspect the Grand Jury minutes and dismiss the Indictment herein on grounds alleging insufficiency of evidence presented and legal instructions given, as well as other improprieties in the presentation of the case to the Grand Jury.

*220 The Court has granted the motion to inspect the Grand Jury minutes and has already ruled in this Decision regarding Counts 11 and 12. The remaining Counts in the Indictment were sufficiently supported by competent and admissible evidence. The legal instructions provided to the Grand Jury were proper. The remaining defense challenges to the manner of presentment are without merit.

Accordingly, except as hereinabove described, the defendant's motion to dismiss the Indictment is denied

MOTION TO INVALIDATE THE BAR ON CHALLENGING AGGRAVATING FACTORS UNDER CRIMINAL PROCEDURE LAW § 400.27(3) (AM-10)

The defendant seeks an Order declaring CPL § 400.27(3) unconstitutional on its face and as applied to this case and further requests an Order striking the District Attorney's Notice of Intent to Seek the Death Penalty. He also seeks an Order invalidating CPL § 400.27 to the extent it bars the defense from challenging aggravating factors at a sentencing proceeding. The People oppose that application and claim the defendant's motion is premature until such time as the sentencing of the defendant is at issue.

The language of the statute in question specifically prevents the District Attorney from introducing evidence about aggravating factors at the sentencing phase of the trial concerning aggravating factors it did not **1001 prove at the guilt phase of the trial. That limitation inures to the benefit of the defendant since it prevents the People,

except in two specific circumstances, from introducing any evidence about additional aggravating factors. The People are, therefore, limited to presenting evidence to rebut mitigating evidence presented by the defendant.

[45] Here, the defendant does not meet his burden to demonstrate the unconstitutionality of the statute beyond a reasonable doubt (Weems v. United States, 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793; People v. Bright, 71 N.Y.2d 376, 526 N.Y.S.2d 66, 520 N.E.2d 1355; People v. Pagnotta, 25 N.Y.2d 333, 305 N.Y.S.2d 484, 253 N.E.2d 202). The New York sentencing provisions exceed the requirements of the New York and United States Constitutions. The provisions "genuinely narrow the class of persons eligible for the death penalty" and reasonably justify the imposition of a death sentence in those appropriate cases (Lowenfield v. Phelps, 484 U.S. 231, 244, 108 S.Ct. 546, 554, 98 L.Ed.2d 568; Zant v. Stephens, 462 U.S. 862, 103 S.Ct. 2733, 77 L.Ed.2d 235). Although this Courts feels the application of the defendant is ripe for decision at this point, this Court feels the defendant has not established sufficient grounds to grant the application sought and, therefore, his motion in this regard is denied.

*221 COUNT 10 OF THE INDICTMENT SHOULD BE DISMISSED PURSUANT TO CPL 210.25(1) BECAUSE IT DOES NOT AS-SERT FACTS INCLUDING EVERY ELE-MENT OF THE OFFENSE CHARGED (AM-11)

[46] The defendant seeks an Order from this Court dismissing Count 10 of the Indictment on the grounds that it is defective because it does not set forth sufficient factual allegations establishing how the defendant commanded the death of Juan Rodriquez-Matos. The defendant's arguments in support of this application are without merit. The case law concerning indictments that track the language of a particular statute makes it clear that Count 10 of the Indictment is sufficient on its face (People v. Ray, 71 N.Y.2d 849, 527 N.Y.S.2d 740,

522 N.E.2d 1037; People v. Cohen, 52 N.Y.2d 584, 439 N.Y.S.2d 321, 421 N.E.2d 813; People v. Iannone, 45 N.Y.2d 589, 412 N.Y.S.2d 110, 384 N.E.2d 656).

Accordingly, the Defendant's application in this regard is in all respects denied.

MOTION TO DECLARE PENAL LAW §
125.27(1)(a)(vii), THE "COMMANDER"
FELONY-MURDER AGGRAVATING
FACTOR, UNCONSTITUTIONAL, PACIALLY
AND AS APPLIED, AND TO PRECLUDE ITS
APPLICATION AT BAR (AM-12)

The defendant seeks an order from this Court invalidating the *commander* portion of Penal Law § 125,27(1)(a)(vii) as vague and overbroad under the 8th and 14th Amendments.

The defendant heroin is charged as both the principal and under the commander liability theory for the death of Juan Rodriguez-Matos. The People contend that the defendant either shot Mr. Rodriguez-Matos himself or ordered another to shoot him.

As previously noted in this Decision, the word command has a long history in New York jurisprudence. There is nothing to indicate that the Legislature intended to give a different meaning to that word than its ordinary meaning (People v. Cruz. 48 N.Y.2d 419, 423 N.Y.S.2d 625, 399 N.E.2d 513). The defendant has not met his burden of proving beyond a reasonable doubt that the term command is unconstitutionally vague, (People v. Pagnotta, 25 N.Y.2d 333, 305 N.Y.S.2d 484, 253 N.E.2d 202) and, therefore, his motion to declare the commander aggravating factor unconstitutionally vague is hereby denied.

MOTION TO CHALLENGE THE CONSTITU-TIONALITY OF DEFENDANT'S ARREST AND TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE (AM-13)

[47][48] This Court has examined both search warrants and their applications that are the subject

of this motion. The applications *222 for both warrants were sufficient to establish probable cause for the issuance of the warrant. Both prongs of the Aguilar-Spinelli test were satisfied. The basis of **1002 knowledge of Monica Szlekovics was grounded on her firsthand observations. Her admissions to Inv. Sheridan were not only corroborated by his knowledge of the nonpublic aspects of the investigation but also were statements made against her penal interest (People v. Elwell, 50 N.Y.2d 231, 428 N.Y.S.2d 655, 406 N.E.2d 471; People v. Mc-Cann, 85 N.Y.2d 951, 626 N.Y.S.2d 1006, 650 N.E.2d 853), The claimed inconsistencies in Ms. Szlekovics' statements do not justify this Court holding hearings pursuant to Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 or People v. Alfinito, 16 N.Y.2d 181, 264 N.Y.S.2d 243, 211 N.E.2d 644. The defendant's papers do not allege any facts supporting a conclusion that perjurious statements were contained in Inv. Sheridan's search warrant application before the issuing Magistrate.

[49] An examination of the "four corners" of the warrants in question and their applications demonstrate that the warrants were properly issued and the returns filed demonstrate that the items taken were properly taken under the warrants. The items objected to by the defense seized beyond the enumerated items in the warrant did constitute evidence of a crime seen in plain view by the executing officers, who were legally in a position to view those items during their search (Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564; U.S. v. Truitt, 521 F.2d 1174 (6th Cir. 1975)).

Accordingly, the defendant's motion to suppress those items is in all respects denied.

MOTION FOR AN ORDER PROHIBITING IMPROPER AND UNDULY PREJUDICIAL JOINDER OF UNRELATED OFFENSES PURSUANT TO CPL § 200.20 (AM-16)

[50] Counts 1 through 4 of the Indictment

herein deal with offenses which are alleged to have occurred on August 6, 1995. Count 5 deals with events of September 22, 1995, Counts 6 through 9 deal with events of October 11, 1996. Counts 10 through 14 deal with events of November 2, 1996. Finally, Counts 15 through 22 deal with events of November 6, 1996. The defendant moves to sever each of these calendared events from the others so that a separate trial will occur for each count or series of counts as they apply to each day listed in the Indictment. The People argue that the events of October 11, 1996, November 2, 1996 and November 6, 1996 are joinable under CPL § 200.20(2)(a). The Court has ruled earlier in this opinion granting the motion of the defendant dismissing Counts *223 11 and 12 of the Indictment on the grounds that the evidence before the Grand Jury was insufficient to support those Counts. In order for this Court to find that the events of August 6, 1995 and September 22, 1995 are joinable with each other and with the later events of October 11, 1996, November 2, 1996 and November 6, 1996 the "serial killer" aspect of the Penal Law § 125.27 would have to apply. Since the Court has ruled that there was insufficient evidence before the Grand Jury on this issue, the only basis for joining the events of August 6, 1995 and September 22, 1995 with those of October 11, 1996, November 2, 1996 and November 6, 1996 would be CPL § 200.20(3). The Court finds no such basis and orders that Counts 1 through 5 of the Indictment be severed and tried separately from the remaining counts of the Indictment. Counts 6-10 and 13-22 shall not be severed and shall be tried jointly on the grounds that they are properly joined under CPL § 200.20

BILL OF PARTICULARS RESPONSE (AM-17)

[51] In crafting the death penalty law, the Legislature declined to change the Discovery and Bill of Particulars provisions of the Criminal Procedure Law. The People, in their response to the defense request for expanded Bill of Particulars informa-

tion, rely on the obligations as delineated by CPL § 200.95. This Court's review of the People's response supports their position.

Accordingly the defendant's motion to compel a further response to the Request for a Bill of Particulars is hereby denied.

The People also indicate in their response that they will continue their on-going duty to supply *Brady* material as, and if, it comes into their possession.

**1003 MOTION CHALLENGING INSTRUC-TION ON SENTENCING CONSEQUENCES OF JURY DEADLOCK PURSUANT TO CRIM-INAL PROCEDURE LAW § 400.27(10) (AM-22)

The defendant seeks an Order declaring Criminal Procedure Law § 400.27(10) unconstitutional to the extent that it requires the court to instruct the capital sentencing jury that the defendant will receive a sentence with a minimum term of between 20 to 25 years and a maximum term of life if the jury fails to unanimously agree on a penalty phase verdict.

Criminal Procedure Law § 400,27(10) provides, in pertinent part, that the court "... must instruct the jury that with respect to each count of murder *224 in the first degree the jury should consider whether or not a sentence of death should be imposed and whether or not a sentence of life imprisonment without parole should be imposed, and that the jury must be unanimous with respect to either sentence". The same section goes on to provide that in the event that the jury cannot reach a unanimous agreement as to whether the defendant should be sentenced to death or life imprisonment without parole, that the court will " ... sentence the defendant to a term of imprisonment with a minimum term of between twenty and twenty-five years and a maximum term of life."

[52] The defendant argues that the instruction

by the court that their failure to act unanimously could result in the defendant's ultimate release from prison will have a coercive effect on the jury and result in a more likely verdict of death, thus depriving the defendant of his constitutional protections guaranteed in the 8th and 14th Amendments of the United States Constitution.

The instruction contemplated in Criminal Procedure Law § 400.27(10) is similar to that required in the State of New Jersey (N.J.S.A. § 2C:11-3 [f]). This section of the New Jersey Death Penalty Statute has been constitutionally examined by the New Jersey Supreme Court under both the United States Constitution and the Constitution of the State of New Jersey and no violation of either constitution was found (State v. Brown, 138 N.J. 481, 651 A.2d 19 [1994]; State v. Ramseur, 106 N.J. 123, 524 A.2d 188 [1987]). This Court agrees with the analysis of the New Jersey appellate courts in this regard.

Accordingly, the defendant's motion on this issue is denied.

MOTION CHALLENGING CRIMINAL PRO-CEDURE LAW §§ 400.27(14) AND 240.45 (2)(a) (AM-23)

[53] Criminal Procedure Law § 400.27 (14)(a)(ii) incorporates the commonly known "reverse" Rasario discovery provision into the sentencing proceeding in a death eligible case. The defendant argues that such incorporation unduly restricts the ability to present a complete and thorough defense and will have an unconstitutional chilling effect on his sentencing phase strategy and presentation. Such claim is without merit. The "reverse" Rosario rule does not violate constitutional rights (People v. Copicotto, 50 N.Y.2d 222, 428 N.Y.S.2d 649, 406 N.E.2d 465); see also Williams v. Florida, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 where Florida's requirement that the defendant disclose the names of alibi witnesses was upheld.

Accordingly, the defendant's motion in this regard is denied.

*225 MOTION CHALLENGING BURDEN OF PROOF IMPOSED UPON DEFENDANT PUR-SUANT TO CRIMINAL PROCEDURE LAW § 400.27(6) (AM-24)

MOTION CHALLENGING APPLICATION OF RULES OF EVIDENCE, PURSUANT TO CRIMINAL PROCEDURE LAW § 400.27(6), TO DEFENDANT'S RIGHT TO PRESENT MITIGATING EVIDENCE (AM-25)

[54] Criminal Procedure Law § 400.27(6) provides that the burden of establishing mitigating factors is on the defendant and must be proven by a preponderance of the evidence. The Section further provides that the rules of evidence shall apply to the defendant's presentation of evidence regarding mitigating factors set forth in subdivision 9 of 400.27, and allows for the admission of reliable hearsay.

The defendant maintains that requiring him to prove his mitigating factors by a preponderance of the evidence increases the **1004 likelihood of an erroneous application of the death penalty. He argues that application of the "by a preponderance of the evidence" standard would lead to the preclusion of relevant mitigating evidence that could tip the scales in favor of a sentence of life without parole, citing Eddings v. Oklahoma, 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1. The United States Supreme Court has specifically considered the question of a defendant bearing that burden of proof at the sentencing phase of a capital murder case and has upheld the constitutionality of such a sentencing scheme (Walton v. Arizona, 497 U.S. 639, 110 S.Ct. 3047, 111 L.Ed.2d 511).

[55] The defendant's argument is that the rigid application of the rules of evidence or the insistence upon "reliable hearsay" will deprive the defendant of his state and federal constitutional rights to due process. This argument is without merit. The rules

of evidence are intended to insure that reliable and relevant information is introduced in a legal proceeding and the Supreme Court of the United States has consistently held that evidence presented during the sentencing phase be both relevant and reliable (Green v. Georgia, 442 U.S. 95, 99 S.Ct. 2150, 60 L.Ed.2d 738; Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297).

Accordingly, the defendant's motions on these issues are denied.

*226 MOTION CHALLENGING VAGUE AND STANDARDLESS SECOND-STEP SENTEN-CING DETERMINATION AND INSTRUC-TION THAT JURORS MAY CONSIDER MIT-IGATING FACTOR PURSUANT TO CRIMIN-AL PROCEDURE LAW § 400.27(11) (AM-26)

Criminal Procedure Law § 400.27(11)(a) provides that the sentencing jury must first weigh aggravating and mitigating circumstances and then reach a unanimous decision as to whether death is an appropriate punishment. The defendant argues that this particular language provides no guidance to the jury and is thus unconstitutionally vague and would lead to a substantial risk that the death penalty would be imposed in an arbitrary and capricious manner.

[56][57] It is the burden of the state to insure that the process involved in sentencing is structured so as to guard against bias or caprice in sentencing (Tuilaepa v. California, 512 U.S. 967, 114 S.Ct. 2630, 129 L.Ed.2d 750). As part of the sentencing formula, the jury is instructed that their decision must be unanimous (CPL § 400.27[10]). The jury can then only impose a sentence of death if it unanimously finds beyond a reasonable doubt that aggravating factors substantially outweigh mitigating factors established by the defendant by a fair preponderance of the evidence (CPL § 400.27[11]). Thus, the Legislature has insured that once a defendant falls within a class of persons eligible for the death penalty, its procedure for arriving at such a decision is not meted out in an arbitrary or capricious manner (California v. Ramos, 463 U.S. 992, 103 S.Ct. 3446, 77 L.Ed.2d 1171).

Accordingly, the defendant's motion on this issue is denied.

[Portions of opinion omitted for purposes of publication.]

N.Y.Co.Ct.,1997. People v. Mateo 175 Misc.2d 192, 664 N.Y.S.2d 981, 1997 N.Y. Slip Op. 97553

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1179

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173 Misc.2d 70, 660 N.Y.S.2d 672, 1997 N.Y. Slip Op. 97347 (Cite as: 173 Misc.2d 70, 660 N.Y.S.2d 672)

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County Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

v. Angel MATEO, Defendant.

June 12, 1997.

Capital defendant sought order with respect to requests for judicial subpoenas duces tecum. The County Court of Monroe, Connell, J., held that defendant was entitled to order allowing requests for judicial subpoenas duces tecum, seeking material to be used in preparation for mitigation phase, to be exparte and under seal.

Order granted.

West Headnotes

Witnesses 410 €== 16

410 Witnesses

410I In General

410k16 k. Subpoena duces tecum. Most Cited Cases

Capital defendant was entitled to order allowing requests for judicial subpoenas duces tecum, seeking material to be used in preparation for mitigation phase, to be ex parte and under seal; while applicable rule required that such applications be on notice, objections to ex parte applications were infrequent, practice in other jurisdictions was to honor such applications, and requiring applications to be on notice would provide district attorney with unfair advance knowledge of defense strategy at sentencing phase. McKinney's CPLR 2307; McKinney's Judiciary Law § 35-b, subd. 8.

**672 *70 Edward J. Nowak, Public Defender of Monroe County (William Easton, of counsel), for Defendant.

Howard R. Relin, District Attorney of Monroe

County (Michael Green, of counsel), for Plaintiff.

JOHN J. CONNELL, Judge.

The defense seeks an Order from this Court allowing requests for judicial subpoenas duces tecum to be ex parte and under seal for materials and documents held by various agencies to be used in assisting their preparation of the mitigation phase *71 of the above entitled capital case. The People have opposed that application, arguing that that procedure would contravene CPL § 610.20(3) and CPLR § 2307.

In support of their application, the defense claims that they have unsuccessfully attempted to obtain various records relating to the defendant even when supplying various agencies with releases signed by the defendant authorizing the release of his records. Several agencies have apparently refused to provide such records without judicial authorization. The defense is seeking the records, not to be used during the guilt phase, but rather in preparation for the sentencing phase of the trial, which, if held, would proceed immediately after the guilt phase.

Although CPLR § 2307 requires that such applications be on notice to the adverse party, that provision is honored more in the breech than in the observance in this county. Perhaps that is because there are infrequent objections to these ex parte applications. Nonetheless, it is clear that the practice in criminal courts in Monroe County has been to honor such applications and allow opposing views to be heard only when specific **673 objections to the individual subpoenas are made or when the issuing judge feels it appropriate to notice opposing counsel based on the specific item sought (People v. John Doe, 170 Misc. 2d 454, 649 N.Y.S. 2d 326).

In a capital case, the defendant bears the burden at the sentencing phase to prove any factor in mitigation by a preponderance of the evidence (173 Misc.2d 70, 660 N.Y.S.2d 672, 1997 N.Y. Slip Op. 97347 (Cite as: 173 Misc.2d 70, 660 N.Y.S.2d 672)

CPL § 400.27[6]). Except in two limited circumstances, the District Attorney may not present any more than a rebuttal case to the defendant's evidence presented. Were the District Attorney noticed as to every type of subpoenaed record sought by the defense, they would also be alerted about the very heart of the defendant's strategy at the sentencing phase.

There is sufficient statutory and case law to justify the defendant's request for ex parte applications in this regard (Judiciary Law § 35-b(8); Ake v. Oklahoma. 470 U.S. 68, at 86-87, 105 S.Ct. 1087, at 1097-98, 84 L.Ed.2d 53). Accordingly, this Court will grant the motion of the defendant to authorize ex parte and under seal applications for subpoenaed documents to be used at the sentencing phase only. Such applications will be reviewed by this Court in camera and upon such review, a decision will be rendered, on an individual basis, as to whether notice should be given to the District Attorney.

N.Y.Co.Ct.,1997. People v. Mateo 173 Misc.2d 70, 660 N.Y.S.2d 672, 1997 N.Y. Slip Op. 97347



249 A.D.2d 894, 672 N.Y.S.2d 594, 1998 N.Y. Slip Op. 04048 (Cite as: 249 A.D.2d 894, 672 N.Y.S.2d 594)

H

Supreme Court, Appellate Division, Fourth Department, New York.

PEOPLE of the State of New York, Appellant,

Angel MATEO, Respondent.

April 29, 1998.

In murder prosecution, defense sought dismissal of counts of indictment for lack of legally sufficient evidence before grand jury. The Monroe County Court, Connell, J., granted motion, and state appealed. The Supreme Court, Appellate Division, held that additional murders alleged to have been committed by defendant were not committed "in a similar fashion" as required to form basis for first-degree murder indictment.

Affirmed.

West Headnotes

Homicide 203 €== 540

203 Homicide

203II Murder

203k539 First Degree, Capital, or Aggravated Murder

203k540 k. In General. Most Cited Cases (Formerly 203k22(1))

Murders alleged to have been committed by defendant within 24 months prior to murder with which he was charged were not committed "in a similar fashion" as required to form basis for first degree murder indictment, where additional murders did not adequately resemble each other with respect to motive, method and surrounding circumstances. McKinney's Penal Law § 125.27, subd. 1(a)(xi).

**594 Howard R. Relin by Wendy Lehmann, Rochester, for Appellant.

William E. Easton, Rochester, for Respondent.

*895 Before LAWTON, J.P., and HAYES, BOEHM and FALLON, JJ.

MEMORANDUM:

We conclude that County Court properly dismissed counts 11 and 12 of the indictment charging defendant with murder in the first degree (Penal Law § 125.27[1][a][xi]). That section provides in part that a defendant may be charged with murder in the first degree when, "[w]ith intent to cause the death of another person, he causes the death of such person or of a third person; and * * * the defendant intentionally caused the death of two or more additional persons within the state in separate criminal transactions within a period of twenty-four months when committed in a similar fashion or pursuant to a common scheme or plan". In dismissing those counts, the court concluded that the People's evidence before the Grand Jury was insufficient to establish that the murders were committed "in a similar fashion". In reaching that conclusion, the court interpreted "in a similar fashion" to mean serial killings, i.e., unique, ritualistic or signature-like slayings. The People contend that the court should have given the phrase "in a similar fashion" its plain meaning and thus should have concluded that the evidence was legally sufficient.

Even affording the phrase "in a similar fashion" its plain meaning, we conclude that the evidence before the Grand Jury was legally insufficient. The record establishes that defendant's motive and method in each of the four murders were different and that the circumstances surrounding each of the murders were different. Because the murders did not adequately resemble each other with respect to motive, method and surrounding circumstances, they were not committed "in a similar fashion". In view of our determination, it is unnecessary to review the propriety of the court's conclusion that

249 A.D.2d 894, 672 N.Y.S.2d 594, 1998 N.Y. Slip Op. 04048 (Cite as: 249 A.D.2d 894, 672 N.Y.S.2d 594)

Penal Law § 125.27(1)(a)(xi) applies only to scrial killings. In addition, because defendant does not argue before us that the phrase "in a similar fashion" is unconstitutionally vague, we do not address that issue.

Order unanimously affirmed.

N.Y.A.D. 4 Dept.,1998. People v. Mateo 249 A.D.2d 894, 672 N.Y.S.2d 594, 1998 N.Y. Slip Op. 04048



251 A.D.2d 1041, 674 N.Y.S.2d 192, 1998 N.Y. Slip Op. 05487 (Cite as: 251 A.D.2d 1041, 674 N.Y.S.2d 192)

Supreme Court, Appellate Division, Fourth Department, New York.

Matter of Honorable Howard R. RELIN, as Monroe County District Attorney, Petitioner,

Honorable John J. CONNELL, as Monroe County Court Judge, Angel Mateo, Respondents, and

Honorable Dennis C. Vacco, Attorney General of New York State, Intervenor.

June 10, 1998.

Prosecutor commenced Article 78 proceeding seeking to prohibit the Supreme Court, Monroe County, John J. Connell, J., from enforcing an order declaring provisions of the death penalty law unconstitutional. The Supreme Court, Appellate Division, held that the provisions governing guilty pleas do not grant a defendant the unilateral right to plead guilty and thereby avoid death penalty and, thus, they do not needlessly encourage guilty pleas in violation of the defendant's right to demand a jury trial.

Petition granted in part.

West Headnotes

Criminal Law 110 @= 273.1(1)

110 Criminal Law 110XV Pleas 110k272 Plea of Guilty 110k273.1 Voluntary Character 110k273.1(1) k. In General. Most Cited Cases

Jury 230 @==31.1

230 Jury 230H Right to Trial by Jury 230k30 Denial or Infringement of Right

230k31.1 k. Statutory Provisions. Most Cited Cases

Death penalty law provisions governing guilty

pleas do not grant defendant the unilateral right to plead guilty and thereby avoid death penalty and, thus, they do not needlessly encourage guilty pleas in violation of defendant's right to demand jury trial. McKinney's CPL §§ 220.10, subd. 5(e), 220.30, subd. 3(b)(vii), 220.60, subd. 2(a).

**192 Monroe County District Attorney (Wendy Lehmann, of counsel), Rochester, for petitioner.

John J. Connell by Donald Thompson, Rochester, for respondent Connell.

Capital Defender's Office by Joseph Flood, Rochester, for respondent Mateo.

New York Civil Liberties Union by Christopher Dunn, New York City, for amicus curiae.

Richard A. Brown, District Attorney of Queens County, Kew Gardens, for New York State District Attorneys' Association, amicus curiae.

*1042 Before LAWTON, J.P., and HAYES, PIG-OTT, BOEHM and FALLON, JJ.

*1041 MEMORANDUM:

The People commenced this original CPLR article 78 proceeding seeking, inter alia, to prohibit respondent the Honorable John J. Connell from enforcing an order declaring CPL 220.10(5)(e), 220.30(3)(b)(vii) and 220.60(2)(a) unconstitutional. We deny that part of the petition seeking a writ of prohibition (see generally, Matter of Gold v. Gartenstein, 54 N.Y.2d 627, 442 N.Y.S.2d 504, 425 N.E.2d 892; Matter of Van Wie v. Kirk, 244 A.D.2d 13, 675 N.Y.S.2d 469 [decided herewith]). Because this issue is of critical importance and is likely to recur, we grant that part of the petition seeking, in the alternative, to convert the proceed251 A.D.2d 1041, 674 N.Y.S.2d 192, 1998 N.Y. Slip Op. 05487 (Cite as: 251 A.D.2d 1041, 674 N.Y.S.2d 192)

ing to a declaratory judgment action (see, CPLR 103[c]; **193Matter of Morgenthau v. Roberts. 65 N.Y.2d 749, 751, 492 N.Y.S.2d 21, 481 N.E.2d 561; Matter of Morgenthau v. Erlbaum, 59 N.Y.2d 143, 151-152, 464 N.Y.S.2d 392, 451 N.E.2d 150, cert. denied 464 U.S. 993, 104 S.Ct. 486, 78 L.Ed.2d 682), and we grant judgment declaring those sections constitutional.

The People contend that the provisions of New York's death penalty statute governing kinds of pleas (CPL 220.10[5][e]), those governing pleas to part of an indictment or covering other indictments (CPL 220.30[3][b][vii]) and those governing the change of a plea (CPL 220.60[2][a]) do not violate respondent Angel Mateo's right to a jury trial and therefore are constitutional. We agree. Those sections do not grant a defendant the unilateral right to plead guilty and thereby avoid the death penalty, and thus they do not "needlessly encourage[]" guilty pleas in violation of defendant's right to demand a jury trial (United States v. Jackson, 390 U.S. 570, 583, 88 S.Ct. 1209, 20 L.Ed.2d 138; see, Matter of Hynes v. Tomei, 237 A.D.2d 52, 666 N.Y.S.2d 687; see also, Corbitt v. New Jersey, 439 U.S. 212, 99 S.Ct. 492, 58 L.Ed.2d 466; North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162; Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747). Contrary to Mateo's contention, those provisions do not violate the N.Y. Constitution (see generally, People v. Seaberg, 74 N.Y.2d 1, 7, 543 N.Y.S.2d 968, 541 N.E.2d 1022). Indeed, they provide a defendant charged with a capital crime with an opportunity to plead guilty.

We have reviewed respondents' remaining contentions and conclude that they are without merit.

Consequently, we grant the petition in part, convert the proceeding to an action for a declaratory judgment and grant judgment in favor of petitioner declaring that CPL 220.10(5)(e), 220.30 (3)(b)(vii) and 220.60(2)(a) are constitutional.

Petition unanimously granted in part without

costs and judgment granted.

N.Y.A.D. 4 Dept.,1998. Relin v. Connell 251 A.D.2d 1041, 674 N.Y.S.2d 192, 1998 N.Y. Slip Op. 05487

177 Misc.2d 814, 676 N.Y.S.2d 903, 1998 N.Y. Slip Op. 98455 (Cite as: 177 Misc.2d 814, 676 N.Y.S.2d 903)

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County Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

Angel MATEO, Defendant.

July 27, 1998.

The prosecution moved to have a defendant, charged with murder, file a notice prior to the commencement of trial if the defense intended to offer psychiatric evidence in the penalty phase. The County Court, Monroe County, Connell, J., held that the statute did not require pretrial notice of intent, as the defense did not seek to introduce psychiatric evidence in the guilt phase.

Motion denied.

West Headnotes

Criminal Law 110 629(9.5)

110 Criminal Law 110XX Trial

110XX(A) Preliminary Proceedings

110k629 List of Witnesses and Disclosure of Other Matters

110k629(9.5) k. Defense of Insanity or Incapacity. Most Cited Cases

A statute requiring a party intending to introduce psychiatric evidence to file a notice of that intent "within a reasonable time prior to trial," did not require a defendant charged with murder and not planning to introduce psychiatric evidence at the guilt phase of his trial to file the notice before the trial began; the prosecution would then exercise its right to have the defendant examined by its independent psychiatrist, and would gain an unfair advantage, and the statute did not prohibit the granting of a continuance if the defendant were found guilty and indicated an intent to introduce psychiatric evidence at the punishment phase of the trial. McKinney's CPL § 400.27, subd. 13(b).

**904 *814 Kevin M. Doyle, Capital Defender (William T. Easton and Joseph T. Flood, of counsel), for defendant.

Howard R. Relin, District Attorney of Monroe County (Michael Green and Wendy Evans Lehmann, of counsel), for plaintiff.

JOHN J. CONNELL, Judge.

The District Attorney has made an application pursuant to Criminal Procedure Law 400.27(13)(b) directing the defendant to file a notice by July 27, 1998 if the defense intends to offer psychiatric evidence *815 at the penalty phase of the trial of this Indictment scheduled to begin on September 1, 1998. The defendant opposes the application of the People, asking this Court, among other things, to delay any application to file such a notice until the completion of the guilt phase of the trial.

CPL 400.27(13)(b) requires either party intending to offer psychiatric evidence to file a notice of that intent "within a reasonable time prior to trial." The notice also requires a "brief but detailed statement specifying the witness, nature and type of psychiatric evidence sought to be introduced." (CPL 400.27[13][b]). The statute also allows the District Attorney to make an application to have the defendant submit to a psychiatric exam for rebuttal purposes, should the defendant file such a notice.

In this case, the defendant has affirmatively stated that there will be no psychiatric evidence submitted by him during the guilt phase of the trial.

The defendant is charged with Murder in the First Degree under § 125.27(1)(a)(vii) and (b) of the Penal Law, the so-called "commander" section. His wife, Monica Szlekovics, was previously charged and tried for the same charge involving the same incident. She had filed a psychiatric notice under CPL 250.10 since the District Attorney was not seeking the death penalty against her. That notice resulted in the Court granting the People's ap-

177 Misc.2d 814, 676 N.Y.S.2d 903, 1998 N.Y. Slip Op. 98455 (Cite as: 177 Misc.2d 814, 676 N.Y.S.2d 903)

plication to have her examined by their independent psychiatrist. The results of those examinations of Monica Szlekovics, as well as her own psychiatric examinations, have been provided to the defendant Mateo in this case by previous order of this Court.

If this Court were to require the defendant to file a notice as requested by the People at this stage of the proceedings, the People would certainly request the opportunity to have the defendant examined by their psychiatrist. Of necessity, the examinations that would follow such an order would touch on the interaction between the defendant and Monica Szlekovics, the hierarchy between the two during the timing of this alleged "command" killing, and the areas of inquiry the People intend to pursue under People v. Ventimiglia, 52 N.Y.2d 350, 438 N.Y.S.2d 261, 420 N.E.2d 59, as outlined by them in previously filed papers before this Court.

There is nothing in the statute that would prevent an adjournment between the guilt phase and, if needed, the penalty phase of this trial. To require the defendant to file this notice before the guilt phase under the facts in this case would be unfairly prejudicial to the defense.

*816 Accordingly, this Court will defer the defense obligation to file a notice under CPL 400.27(13) until the completion of the guilt **905 phase of the capital trial. Should that Notice be filed at that time, this Court will give adequate opportunity to the People to have the defendant examined by a psychiatrist of their choosing and to prepare for the sentencing phase. This Court also puts both sides on notice at this point that in anticipation of such a notice, preliminary preparations should be made by both sides to deal with the eventuality of hiring psychiatric witnesses on these issues.

N.Y.Co.Ct.,1998. People v. Mateo 177 Misc.2d 814, 676 N.Y.S.2d 903, 1998 N.Y. Slip Op. 98455

177 Misc.2d 817, 676 N.Y.S.2d 908, 1998 N.Y. Slip Op. 98456 (Cite as: 177 Misc.2d 817, 676 N.Y.S.2d 908)

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County Court, Monroe County, New York.

The PEOPLE of the State of New York, Plaintiff,

v. Angel MATEO, Defendant.

July 29, 1998.

Defendant charged with murder filed application for order precluding People from arguing or suggesting that defendant caused victim's death by shooting him with gun. The County Court, Monroe County, Connell, J., held that People could argue that defendant shot victim, even though People argued in prior murder trial of defendant's wife that wife fired fatal shot.

Application denied.

West Headnotes

Criminal Law 110 €==1983

110 Criminal Law

110XXXI Connsel

110XXXI(D) Duties and Obligations of Prosecuting Attorneys

110XXXI(D)1 In General

110k1983 k. Assertion of Theory Inconsistent with Theory Previously Asserted. Most Cited Cases

(Formerly 110k700(1))

People would be permitted to argue that defendant caused murder victim's death by shooting him with gun, even though People had argued in prior murder trial of defendant's wife that wife fired fatal shot; People's argument was reasonable view of evidence and testimony which, according to People, did not establish with certainty who actually killed victim.

**909 *817 Howard R. Relin, District Attorney of Monroe County, (Michael Green and Wendy Evans Lehmann, of counsel), for plaintiff. Kevin M. Doyle, Capital Defender, (William T. Easton and Joseph T. Flood, of counsel), for defendant.

JOHN J. CONNELL, Judge.

This is an application by the defendant for an Order precluding the prosecution from arguing or in any other manner asserting or suggesting that the defendant caused the death of Juan Rodriquez-Matos by shooting him with a gun. The basis of their application is grounded in what took place in the trial of Monica Szlekovics, the defendant's wife. At that murder trial, the People argued to the jury that the defendant Szlekovics *818 actually fired the fatal shot that killed Mr. Rodriquez-Matos. The Szlekovics statements introduced by the District Attorney at that trial contradicted each other as to whether she or Mr. Mateo actually killed the victim

The People oppose the defendant's application, pointing out that from the very earliest stages of both the Szlekovics and Mateo cases, they have taken the position that they are not able to say with certainty which defendant pulled the trigger and which, if any, commanded the other to pull the trigger. They maintain that the argument they made to the jury was in good faith based on a reasonable view of the evidence that was presented to that jury.

The People do not intend to call Ms. Szlekovics at defendant Mateo's trial. The fact that they will not be calling her takes them out of the situation criticized in *Thompson v. Calderon*, 120 F.3d 1045, 9th Cir. en banc, cert. granted, 521 U.S. 1136, 118 S.Ct. 14, 138 L.Ed.2d 1037.

In the *Mateo* case, the People also intend to offer evidence of the defendant's conflicting versions of what occurred. Witnesses will testify that he admitted actually shooting the victim at some points and at others indicated that he commanded Ms. Szlekovics to shoot the victim. To still others, he 177 Misc.2d 817, 676 N.Y.S.2d 908, 1998 N.Y. Slip Op. 98456 (Cite as: 177 Misc.2d 817, 676 N.Y.S.2d 908)

expressed surprise that Ms. Szlekovics did shoot the victim.

It appears then that in this case, the People are merely intending to argue reasonable views of the evidence that could be drawn from the testimony and physical evidence that the jury will be reviewing.

Accordingly, the defendant's application is in all respects denied.

N.Y.Co.Ct.,1998. People v. Mateo 177 Misc.2d 817, 676 N.Y.S.2d 908, 1998 N.Y. Slip Op. 98456

Westlaw.

706 N.E.2d 1201 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177, 1998 N.Y. Slip Op. 11377 (Cite as: 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177)

Page 1

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Court of Appeals of New York.

In the Matter of Charles J. HYNES, as District Attorney of Kings County, Respondent,

V.

Albert TOMEI, as Justice of the Supreme Court, et al., Appellants.

In the Matter of Howard R. Relin, as Monroe

In the Matter of Howard R. Relin, as Monroe County District Attorney, Respondent,

v.
John J. Connell, as Monroe County Court Judge, et al., Appellants,

and
Dennis C. Vacco, Attorney-General of the State of

New York, Intervenor-Respondent,
Dec. 22, 1998,

In case one, defendant charged with, inter alia, murder in first-degree moved for order declaring unconstitutional the plea provisions of death penalty statute under which a defendant may be sentenced to death only after a jury trial, and a death sentence is barred upon entry of a guilty plea. The Supreme Court, Kings County, Tomei, J., granted motion. The People sought writ of prohibition. The Supreme Court, Appellate Division, 237 A.D.2d 52, 666 N.Y.S.2d 687, declared the statutory provisions constitutional. Defendant appealed. In case two, prosecutor commenced Article 78 proceeding seeking to prohibit the Supreme Court, Monroe County, John J. Connell, J., from enforcing an order declaring plea provisions of death penalty law unconstitutional. The Supreme Court, Appellate Division, 251 A.D.2d 1041, 674 N.Y.S.2d 192, declared provisions constitutional. Defendant appealed. The Court of Appeals, Kaye, C.J., held that: (1) plea provisions of death penalty statute impermissibly burden a defendant's Fifth Amendment right against selfincrimination, and Sixth Amendment right to a jury trial, and (2) unconstitutional plea provisions were severable from remained of death penalty statute.

Reversed.

West Headnotes

[1] Sentencing and Punishment 350H C=1628

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(A) In General
350Hk1622 Validity of Statute or Regulatory Provision

350IIk1628 k. Other Particular Provisions. Most Cited Cases

(Formerly 110k1206.1(2))

Provisions of the death penalty statute, under which a defendant may be sentenced to death only after a jury trial and a death sentence is barred upon entry of a guilty plea with consent of court and People, impermissibly burden a defendant's Fifth Amendment right against self-incrimination, and Sixth Amendment right to a jury trial. U.S.C.A. Const.Amends. 5, 6; McKinney's CPL §§ 220.10, subd. 5(e), 220.30, subd. 3(b)(vii).

[2] Criminal Law 110 €==273.1(2)

110 Criminal Law

110XV Pleas

110k272 Plea of Guilty

110k273.1 Voluntary Character

110k273.1(2) k. Representations, Promises, or Coercion; Plea Bargaining. Most Cited Cases

Plea bargaining serves important functions for both prosecutors and defendants, such as individualized justice, leniency and economy.

[3] Criminal Law 110 \$\infty 273.1(2)

110 Criminal Law

110XV Pleas

110k272 Plea of Guilty

110k273.1 Voluntary Character

110k273,1(2) k. Representations,

Promises, or Coercion; Pica Bargaining. Most Cited

706 N.E.2d 1201 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177, 1998 N.Y. Slip Op. 11377

(Cite as: 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177)

Cases

State may encourage guilty pleas by offering benefits to defendants' in return for a guilty plea.

[4] Criminal Law 110 @ 273.1(2)

110 Criminal Law

110XV Pleas

110k272 Plea of Guilty

110k273.1 Voluntary Character

110k273.1(2) k. Representations, Promises, or Coercion; Plea Bargaining. Most Cited Cases

Plea bargaining becomes no less lawful or desirable when it is codified in statutory form.

[5] Statutes 361 € \$\infty 64(1)\$

361 Statutes

3611 Enactment, Requisites, and Validity in General

361k64 Effect of Partial Invalidity

361k64(1) k. In General, Most Cited

Cases

If removing unconstitutional provisions of statute while leaving the remainder intact would result in a law the Legislature would not have intended, the entire statute must be stricken and unconstitutional provisions are not severable.

[6] Statutes 361 @-64(6)

361 Statutes

3611 Enactment, Requisites, and Validity in General

361k64 Effect of Partial Invalidity

361k64(6) k. Public Offenses, Prosecutions, and Punishments. Most Cited Cases

Unconstitutional provisions of death penalty statute, under which a defendant may be sentenced to death only after a jury trial and a death sentence is barred upon entry of a guilty plea, were severable from remainder of death penalty statute, which would remain valid; plea provisions were discrete and their removal would not affect classification of capital offenses or conduct of trial or penalty phase.

McKinney's CPL §§ 220.10, subd. 5(e), 220.30, subd. 3(b)(vii); Laws 1995, c. 1, § 37.

Page 2

[7] Criminal Law 110 €=273(2)

110 Criminal Law

110XV Pleas

110k272 Plea of Guilty

110k273 In General

110k273(2) k. Right to Plead Guilty; Mental Competence. Most Cited Cases

Defendant may not plead guilty to first degree murder while a notice of intent to seek the death penalty is pending. McKinney's CPL § 220.60,

[8] Statutes 361 €== 64(6)

361 Statutes

subd. 2(a).

3611 Bnactment, Requisites, and Validity in General

361k64 Effect of Partial Invalidity

361k64(6) k. Public Offenses, Prosecutions, and Punishments. Most Cited Cases

Declaration of unconstitutionality of death penalty statute's plea provisions, under which defendant charged with first degree murder could avoid death sentence by pleading guilty, did not require that provision allowing defendants who have pleaded not guilty to any indictment to withdraw plea before verdict be declared unconstitutional, where provision allowing withdrawal of plea was not limited to first degree murder cases. U.S.C.A. Const.Amends. 5, 6; McKinney's CPL §§ 220.10, subd. 5(e), 220.30, subd. 3(b)(vii), 220.60, subd.

***178 *615 **1202 Flamhaft, Levy, Kamins & Hirsch, Brooklyn (Barry Kamins of counsel), for Albert Toinei, appellant in the first above-entitled action.

*616 Kevin M. Doyle, Capital Defender, New York City (Susan H. Salomon of counsel), for Michael Shane Hale, appellant in the first above-entitled action. 706 N.E.2d 1201 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177, 1998 N.Y. Slip Op. 11377 (Cite as: 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177) Page 3

Charles J. Hynes, District Attorney of Kings County, Brooklyn (Jonathan Frank and Keith Dolan of counsel), for respondent in the first above-entitled action.

Dennis C. Vacco, Attorney-General, New York City (Jill Gross *617 Marks, Edward D. Saslaw and Michael Buskus of counsel), for intervenor-respondent in the first above-entitled action.

Christopher Dunn, New York City, Norman Siegel and Arthur N. Eisenberg for New York Civil Liberties Union Foundation, amicus curiae in the first above-entitled action.

Donald M. Thompson, Rochester, for John J. Connell, appellant in the second above-entitled action.

***179 *618 **1203 Office of Capital Defender, Rochester (Joseph T. Flood and William T. Baston of counsel), for Angel Mateo, appellant in the second above-entitled action.

Howard R. Relin, District Attorney of Monroe County, Rochester*619 (Wendy Evans Lehmann of counsel), for respondent in the second above-entitled action.

Dennis C. Vacco, Attorney-General, New York City (Jill Gross Marks, Edward D. Saslaw and Michael Buskus of counsel), for intervenor-respondent in the second above-entitled action.

William J. Fitzpatrick, District Attorney of Onondaga County, Syracuse, Richard A. Brown, District Attorney of Queens County, Kew Gardens (Gary Fidel and Linda Cantoni of counsel), and Bruce Seeliger for New York State District Attorneys Association, amicus curiae in the first and second above-entitled actions.

*620 OPINION OF THE COURT

KAYE, Chief Judge.

Thirty years ago, the United States Supreme Court struck down the death penalty provision of the Federal Kidnaping Act (18 U.S.C. § 1201[a]),

which allowed a defendant to be sentenced to death only after a jury trial. The Supreme Court invalidated the provision because, by needlessly encouraging guilty pleas and jury waivers to avoid death sentences, it impermissibly burdened defendants' Fifth Amendment right against self-incrimination and Sixth Amendment right to a jury trial (United States v. Jackson. 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138). Despite the passage of three decades, a plethora of decisions involving the death penalty and a sea change in plea bargaining, the Supreme Court has never overruled Jackson, which binds this Court. Indeed, every other death penalty State has fit its capital murder plea-bargaining procedures within the rationale of Jackson.

Three years ago, the New York State Legislature enacted a capital punishment statute that-like the Federal Kidnaping Act-allows a defendant to be sentenced to death only after a jury trial (L.1995, ch. 1). Bench trials are not permitted in capital cases (see, N.Y. Const., art. I, § 2), and the statute bars imposition of a death sentence upon a guilty plea (see, CPL 220.10[5][e]; 220.30[3][b][vii]; 220.60[2][a]). The New York law thus explicitly provides two levels of penalty for the same offense, imposing death only on those who assert innocence and proceed to trial. First Defendants before us now challenge the plea provisions of the New York statute as violative of their Fifth and Sixth Amendment rights, relying on Jackson.

FN1. Significantly, of the 39 death penalty jurisdictions in the United States, only the New York statute provides for such a difference in maximum punishments.

[1-3] Both trial courts held the plea provisions facially unconstitutional under Jackson (People v. Hale, 173 Misc.2d 140, 661 N.Y.S.2d 487; People v. Mateo, 175 Misc.2d 192, 664 N.Y.S.2d 981). In separate declaratory judgment actions, the Appellate Division of the Second and Fourth Departments subsequently declared the provisions constitutional (Matter of Hynes v. Tomei, 237 A.D.2d 52, 666 N.Y.S.2d 687; Matter of Relin v. Connell, 251

A.D.2d 1041, 674 N.Y.S.2d 192). We are convinced that Jackson compels the contrary result, and therefore reverse the Appellate Division orders and declare CPL 220.10(5)(e) and 220.30(3)(b)(vii) unconstitutional. CPL 220.60(2)(a), in the absence of the other two challenged provisions, is constitutional. Because the unconstitutional provisions*621 are severable, the remainder of the statute is also unaffected by our ruling.

I.

The Federal Kidnaping Act considered in Jackson provided:

"Whoever knowingly transports in interstate *** commerce, any person who has been unlawfully *** kidnaped *** and held for ransom *** or otherwise *** shall be punished (1) by death if the kidnaped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed."

***180 **1204 Because the Act authorized the death penalty only on the recommendation of a jury, while a defendant convicted of the same offense on a guilty plea or by a Judge escaped the threat of capital punishment, the Supreme Court concluded that the Act "needlessly" encouraged guilty pleas and jury waivers (United States v. Jackson, supra, at 583, 88 S.Ct. 1209; see also, Pope v. United States, 392 U.S. 651, 88 S.Ct. 2145, 20 L.Ed.2d 1317 (death sentence imposed under the Federal Bank Robbery Act (18 U.S.C. § 2113[e]) vacated for the same reason]). The Court acknowledged that restricting the death penalty to cases in which a jury recommends it is a legitimate goal, and that such a restriction would likely decrease the frequency of capital punishment. However, the Court concluded these considerations did not save the Act from constitutional infirmity. While the Act's chilling effect on a defendant's exercise of the Fifth Amendment right against self-incrimination and Sixth Amendment right to a jury trial may have been incidental, the effect was also "unnecessary and therefore excessive," since Congress could have achieved its goals by allowing juries to sentence defendants to the full range of punishments regardless of how guilt was determined (id., at 582-583, 88 S.Ct. 1209).

Shortly after Jackson, this Court invalidated two provisions of the former Code of Criminal Procedure that required waiver of a jury trial in order to receive the benefit of youthful offender treatment (see, People v. Michael A.C., 27 N.Y.2d 79, 313 N.Y.S.2d 695, 261 N.E.2d 620). Although respondents who refused to waive a jury trial were not subject to the death penalty, they were exposed to longer prison sentences than those prosecuted as youthful offenders. Drawing a parallel to Jackson, this Court held that "a procedure which offers an individual a reward for waiving a fundamental *622 constitutional right, or imposes a harsher penalty for asserting it, may not be sustained" (id., at 86, 313 N.Y.S.2d 695, 261 N.E.2d 620). FN2

FN2. Respondents' reliance on People v. Sher (24 N.Y.2d 454, 301 N.Y.S.2d 46, 248 N.E.2d 887, mot. to amend remittitur granted 24 N.Y.2d 1031, 302 N.Y.S.2d 853, 250 N.E.2d 253, cert. denied 396 U.S. 837, 90 S.Ct. 96, 24 L.Ed.2d 87), a case decided before Michael A. C., is misplaced. Defendant in Sher was not subject to the death penalty at the time of his appeal. On June 1, 1965, Governor Rockefeller announced that he would grant executive elemency to all death row immates, such as Sher, who would not be subject to capital punishment under the revised death penalty statute, and commute their sentences to life imprisonment (see, People v. Sher, supra, 24 N.Y.2d, at 456, 301 N.Y.S.2d 46, 248 N.E.2d 887, n, citing press release of June 1, 1965 by Governor Rockefeller at the time of approval of L.1965, ch. 1030, § 125.30). Thus, Sher was subject to the same maximum sentence after a jury trial-life imprisonment-as he would have been had he pleaded guilty.

II.

New York's death penalty statute authorizes a District Attorney to file a notice of intent to seek the death penalty against a defendant charged with murder in the first degree (see, Penal Law § 125.27; CPL 250.40). Upon conviction by a jury, a capital defendant faces a separate sentencing proceeding before a jury to determine whether the penalty imposed will be death or life imprisonment without parole (see, CPL 400.27). The statute affords a defendant the opportunity to ensure a maximum sentence of life without parole by pleading guilty pursuant to the following provisions:

"A defendant may not enter a plea of guilty to the crime of murder in the first degree as defined in section 125.27 of the penal law; provided, however, that a defendant may enter such a plea with both the permission of the court and the consent of the people when the agreed upon sentence is either life imprisonment without parole or a term of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment without parole" (CPL 220.10[5][e]; 220.30[3][b][vii]).

"A defendant who has entered a plea of not guilty to an indictment may, with both the permission of the court and the consent of the people, withdraw such plea at any time before the rendition of a verdict and enter: (a) a plea of guilty to part of the indictment pursuant to subdivision three or four ***181 **1205 but subject to the limitation in subdivision five of section 220.10 " (CPL 220.60[2][a]).

*623 For all other crimes in New York only one top sentence is prescribed by statute.

[1] Thus, like the invalidated Federal Kidnaping Act provision, New York's death penalty statute explicitly provides for the imposition of the death penalty only upon a jury verdict. As a result, under the New York statute, only those defendants who exercise the Fifth Amendment right against selfincrimination and Sixth Amendment right to a jury trial put themselves at risk of death. Nevertheless, respondents argue that the New York statute is distinguishable from the Federal Kidnaping Act in several ways. We conclude that the distinctions are without a constitutionally cognizable difference.

First, under the challenged New York provisions, a defendant can plead guilty to first degree murder, with agreement on the sentence to be imposed, only with the permission of the court and consent of the People (see, CPL 220.10[5] [e]; 220.30[3][b][vii]). Because a defendant does not have unilateral control of the plea process, respondents argue, the statute never gives a defendant the choice between facing a jury and risking death on the one hand, and pleading guilty and avoiding death on the other. Therefore, respondents urge, the statute cannot "needlessly" encourage guilty pleas.

The Supreme Court, however, has found approval of a trial court and a prosecutor irrelevant to the Jackson analysis. Defendants prosecuted under the Federal Kidnaping Act could not enter a plea of guilty as of right, since Federal Trial Judges had discretion to reject guilty pleas and jury trial waivers. This judicial involvement did not cure the constitutional problem: the statute's infirmity was not coercion of guilty pleas and jury waivers but needless encouragement of them (United States v. Jackson, supra, at 583, 88 S.Ct. 1209). Even though not every guilty plea to a charge under the Act was necessarily involuntary, the statute still impermissibly burdened defendants' constitutional rights (id.).

FN3. In the years following Jackson, the Supreme Court made clear that Jackson did not establish a new test for determining the validity of guilty pleas, but rather prohibited the Federal Kidnaping Act's impermissible burden on a defendant's exercise of constitutional rights. The Court also held that an otherwise valid plea is not necessarily involuntary if induced by the de-

706 N.E.2d 1201 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177, 1998 N.Y. Slip Op. 11377 (Cite as: 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177) Page 6

fendant's fear of the death penalty, and it refused to vacate guilty pleas simply because they were agreed to pursuant to statutes subsequently invalidated by Jackson (see, Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747; North Carolina v. Alford. 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162; Parker v. North Carolina, 397 U.S. 790, 90 S.Ct. 1458, 25 L.Ed.2d 785).

The Supreme Court's subsequent application of Jackson further demonstrates that the People's involvement in the plea *624 process fails to distinguish away Jackson's prevailing rationale. Three years after Jackson, the Supreme Court declared unconstitutional North Carolina's capital pleading scheme, which required the approval of both the prosecutor and the court for a defendant to plead guilty. Under the challenged North Carolina statute, if a defendant charged with capital murder tendered a signed plea of guilty, the prosecutor, with the court's approval, could accept or reject the plea. If the plea were rejected, the trial would "proceed upon a plea of not guilty and the tender of the plea of guilty would have no legal significance," exposing the defendant to the death penalty (State v. Atkinson, 275 N.C. 288, 317, 167 S.E.2d 241, 259, rev'd 403 U.S. 948, 91 S.Ct. 2283, 29 L.Ed.2d 859). By contrast, if the plea were accepted, the effect would be a sentence of life imprisonment. In June 1971, after it had decided Brady, Alford and Parker, the Supreme Court reversed five death sentences imposed under this statute, in a summary disposition that, without explanation, simply cited Jackson:

"Judgments, insofar as they impose the death sentence, reversed, United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968), Pope v. United States, 392 U.S. 651, 88 S.Ct. 2145, 20 L.Ed.2d 1317 (1968), and eases remanded for further proceedings" (Atkinson v. North Carolina, 403 U.S. 948, 91 S.Ct. 2283, 29 L.Ed.2d 859; Roseboro v. North Carolina, 403 U.S. 948, 91 S.Ct.

2289, 29 L.Ed.2d 860; Hill v. North Carolina, 403 U.S. 948, 91 S.Ct. 2287, 29 L.Ed.2d 860; Williams v. North Carolina, 403 U.S. 948, 91 S.Ct. 2290, 29 L.Ed.2d 860; ***182 **1206 Sanders v. North Carolina, 403 U.S. 948, 91 S.Ct. 2290, 29 L.Ed.2d 860).

Thus, the need to obtain approval from the People and the court will not save plea provisions that otherwise violate Jackson (see also, People v. Michael A.C., 27 N.Y.2d 79, 313 N.Y.S.2d 695, 261 N.E.2d 620, supra [Code of Criminal Procedure provisions unconstitutional on Jackson grounds, even though court approval was required, with or without the recommendation of the Grand Jury or District Attorney]). FN4

FN4. The Nevada Supreme Court, in striking Nevada's death penalty, also concluded that the approval of both the State and the court could not save an otherwise unconstitutional capital pleading scheme (Spillers V. State, 84 Nev. 23, 436 P.2d 18, overruled on other grounds Bean v. State, 86 Nev. 80, 465 P.2d 133).

[2][3][4] Second, respondents argue that the challenged New York provisions are distinguishable from the Federal Kidnaping Act because they merely codify permissible plea bargaining, which was not at issue in Jackson. Subsequent to Jackson, both the Supreme Court and this Court have acknowledged the legitimacy and desirability-indeed, the necessity-of plea bargaining (see, Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427; People v. Selikoff, 35 N.Y.2d 227, 360 N.Y.S.2d 623, 318 N.E.2d 784, cert. denied 419 U.S. 1122, 95 S.Ct. 806, 42 L.Ed.2d 822). Plea bargaining serves *625 important functions for both prosecutors and defendants, such as individualized justice, leniency and economy (State v. Forcella, 52 N.J. 263, 245 A.2d 181, rev'd in part sub nom. Funicello v. New Jersey, 403 U.S. 948, 91 S.Ct. 2278, 29 L.Ed.2d 859). A State clearly may encourage guilty pleas by offering benefits to defendants' in return for a guilty plea (Corbitt v. New Jersey, 439 U.S. 212, 219, 99 S.Ct. 492, 58 L.Ed.2d 466). Furthermore, plea bargaining becomes no less lawful or desirable when it is codified in statutory form (see, id., at 224, n. 14, 99 S.Ct. 492).

While plea bargaining is permissible, the Supreme Court in Jackson prohibited statutes that "needlessty" encourage guilty pleas, which are not constitutionally protected, by impermissibly burdening constitutional rights. Given the availability of alternatives that do not impermissibly burden defendants' constitutional rights, the plea provisions of the statute before us "cannot be justified by [an] ostensible purpose" such as the facilitation of plea bargaining (United States v. Jackson, supra, at 582-583, 88 S.Ct. 1209).

Respondents rely heavily on Corbitt, in which the Supreme Court held that it is constitutionally permissible to offer a defendant the possibility of escaping the most severe penalty by pleading guilty (see, Corbitt v. New Jersey, supra, at 217-219, 99 S.Ct. 492). The New Jersey statute at issue in Corbitt, however, provided for the same maximum sentence-life imprisonment-regardless of a defendant's plea. While, a lesser sentence was permitted for those defendants who pleaded guilty, it was not guaranteed. Thus, the statute survived constitutional scrutiny because it did "not reserve the maximum punishment for murder for those who insist on a jury trial" (id., at 217, 99 S.Ct. 492). This situation is readily distinguishable from the challenged New York provisions, which indeed prescribe a lesser agreed-upon sentence for those who plead guilty. In the words of Jackson, "the defendant who abandons the right to contest his guilt before a jury is assured that he cannot be executed; the defendant ingenuous enough to seek a jury acquittal stands forewarned that, if the jury finds him guilty and does not wish to spare his life, he will die" (United States v. Jackson, supra, at 581, 88 S.Ct. 1209; see, Corbitt v. New Jersey, supra, at 217, 99 S.Ct. 492).

FN5. While the Supreme Court has never overruled Jackson, it has not since Corbitt

(decided in the quite different world of 1978) made reference to Jackson 's "needless" encouragement of guilty pleas in any majority opinion. As discussed below, however, the Jackson rationale continues to have controlling significance in the State courts. Several State courts during the past two decades have explicitly relied on Jackson in declaring provisions of their States' death penalty statutes unconstitutional on this ground, most recently New Hampshire in 1991 (see, State v. Johnson, 134 N.H. 570, 595 A.2d 498).

Finally, respondents point to the bifurcated capital trial procedure in New York, by which a jury that finds a defendant *626 guilty ***183 **1207 determines the sentence in a separate proceeding (see, CPL 400.27). By contrast, a defendant prosecuted under the Pederal Kidnaping Act faced a unitary trial. Respondents suggest that under the bifurcated scheme, a defendant may have an opportunity to agree to a sentence after the guilt phase of the trial, and thus after exercising the rights to maintain innocence and to have a jury determine guilt.

This does not alleviate the Jackson problem, however, because bifurcation does not eliminate the statutory framework that allows the possibility of death only after a jury trial. Capital defendants under the New York statute who are awaiting trial and are offered a plea are still faced with the choice Jackson declared unconstitutional: exercise Fifth and Sixth Amendment rights and risk death, or abandon those rights and avoid the possibility of death. Furthermore, as respondents forcefully assert in trying to distinguish the challenged provisions from the Federal Kidnaping Act, a prosecutor is not required to accept a defendant's guilty plea. In fact, a prosecutor may be less willing to forego pursuit of the death penalty after a defendant's guilt has been established beyond a reasonable doubt. Thus, before deciding whether to proceed to trial, a defendant cannot know whether a deal on the sentence

706 N.E.2d 1201 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177, 1998 N.Y. Slip Op. 11377 (Cite as: 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177) Page 8

to be imposed will be available after a guilty verdict and before sentencing, and bifurcation does not eliminate the "chilling effect" on a defendant's constitutional rights to maintain innocence and demand a jury trial (United States v. Jackson, supra, at 582, 88 S.Ct. 1209).

In sum, respondents' attempts to distinguish New York's death penalty statute from the death penalty invalidated by the Supreme Court in Jackson fail. We recognize that New York's death penalty statute carries a strong presumption of constitutionality, as do all statutes (see, People v. Davis, 43 N.Y.2d 17, 30, 400 N.Y.S.2d 735, 371 N.E.2d 456, cert. denied 435 U.S. 998, 98 S.Ct. 1653, 56 L.Ed.2d 88, rearg. dismissed 61 N.Y.2d 670, 472 N.Y.S.2d 1028, 460 N.E.2d 232). However, the New York provisions are unconstitutional for the same reason as the Federal Kidnaping Act: by statutory mandate, the death penalty hangs over only those who exercise their constitutional rights to maintain innocence and demand a jury trial. Thus, Jackson compels us to invalidate these provisions, just as it has compelled other State high courts to invalidate their capital plea provisions with the same constitutional infirmity (see, e.g., *627State v. Johnson, 134 N.H. 570, 595 A.2d 498 [1991], supra; Commonwealth v. Colon-Cruz, 393 Mass. 150, 470 N.E.2d 116 [1984]; State v. Frampton, 95 Wash.2d 469, 627 P.2d 922 [1981]; State v. Funicello, 60 N.J. 60, 286 A.2d 55 [1972], cert. denied sub nom. New Jersey v. Presha, 408 U.S. 942, 92 S.Ct. 2849, 33 L.Ed.2d 766; see also, Spillers v. State, 84 Nev. 23, 436 P.2d 18 [1968], supra [decided prior to the Supreme Court's decision in Jackson]).

By contrast, the death penalty statutes of States that have rejected a Jackson challenge, with one exception, provide for the possibility of a death sentence upon a guilty plea (see, e.g., State v. Mann, 1996 WL 465764, 1996 Tenn.Crim.App. LEXIS 508, affd 959 S.W.2d 503, cert. denied 524 U.S. 956, 118 S.Ct. 2376, 141 L.Ed.2d 743; Conger v. Warden, 89 Nev. 263, 510 P.2d 1359). The excep-

tion, Arkansas, avoided a *Jackson* problem because the Trial Judge, not the jury, made the final determination of whether the death penalty would be imposed, and because guilty pleas were permitted only after the prosecutor waived the death penalty (see. e.g., Ruiz v. State, 275 Ark. 410, 630 S.W.2d 44, cert. denied 459 U.S. 882, 103 S.Ct. 181, 74 L.Ed.2d 148).

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[5] The question remains whether the entire death penalty statute must be invalidated, as defendants urge, or whether the challenged provisions may be severed, leaving the statute otherwise operational. The answer depends on whether "the legislature, if partial invalidity had been foreseen, would have wished the statute to be enforced with the invalid part exscinded, or rejected altogether" (People ex rel. Alpha Portland Cement Co. v. Knapp, 230 N.Y. 48, 60, 129 N.E. 202 [Cardozo, J.], rearg. denied 231 N.Y. 516, 132 N.E. 870, cert. denied sub nom. ***184 **1208 State Tax Commr. v. People ex rel. Alpha Portland Cement Co., 256 U.S. 702, 41 S.Ct. 624, 65 L.Ed. 1179). If removing particular provisions while leaving the remainder intact would result in a law the Legislature would not have intended, the entire statute must be stricken (see, e.g., Matter of New York State Superfund Coalition v. New York State Dept. of Envtl. Conservation, 75 N.Y.2d 88, 94, 550 N.Y.S.2d 879, 550 N.E.2d 155).

In arguing that the death penalty itself should be stricken, defendants seek support from Jackson, in which the Supreme Court struck the death penalty from the Federal Kidnaping Act. In that statute, it was the death penalty provision itself, which was added two years after enactment of the original statute, that caused the constitutional infirmity. When enacted in 1932, the Federal Kidnaping Act did not provide for capital punishment; it merely defined the Federal crime of kidnaping and set the punishment as imprisonment for a term of years, *628 to be decided by the trial court (see, 47 U.S. Stat 326). Regardless of how a defendant was convicted under

706 N.E.2d 1201 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177, 1998 N.Y. Slip Op. 11377 (Ctte as: 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177)

the original Act, the potential penalties were the same.

The Act was amended in 1934, however, to change the penalty structure, providing for the imposition of the death penalty only on a jury recommendation, but a prison term otherwise (see, 48 U.S. Stat 781). It was the addition of the death penalty in this manner, which resulted in different levels of punishment depending on whether defendants exercised their constitutional rights, that rendered the statute unconstitutional. Therefore, it was only through excision of the Act's death penalty clause that the constitutional infirmity could be cured. The result was the same sentencing system as the one contained in the original Act-those convicted would be sentenced by the court to imprisonment for a term of years. At the same time, by removing only the death penalty clause, the Court was able to preserve the purpose of the Act-to make interstate kidnaping a Federal crime.

[6] In contrast to the Federal Kidnaping Act, it is clear from the face of the statute before us that the very purpose of the Legislature and Governor in enacting the statute was to provide for capital punishment in New York. The statute's severability clause indicates that the lawmakers would not have wanted the entire statute to fail if the particular provisions regarding pleas were declared unconstitutional:

"It any section, part or provision of this act shall be declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such declaration shall be limited to the section, part or provision directly involved in the controversy in which such declaration was made and shall not affect any other section, part or provision thereof" (L.1995, ch. 1, § 37).

Nor is invalidation of the death penalty necessary to obviate the *Jackson* problem: excision of the capital pleading provisions eliminates the burden on constitutional rights prohibited by *Jackson*, since without those provisions there is only one

maximum penalty for first degree murder. Furthermore, the plea provisions are discrete, and by no means vital to the remainder of the statute. Their removal would not affect the classification of capital offenses, or the conduct of the trial or penalty phase of capital cases.

[7][8] Finally, while CPL 220.10(5)(e) and 220.30(3)(b)(vii) relate exclusively to pleas in first degree murder cases and *629 "needlessly" encourage guilty pleas in violation of Jackson, CPL 220.60(2)(a) is not limited to first degree murder cases, FNO nor does it, in the absence of CPL 220.10(5)(e), violate Jackson. Therefore, only CPL 220.10(5)(e) and 220.30(3)(b)(vii) must be stricken. FN7 Under the resulting statute, a defendant***185 **1209 may not plead guilty to first degree murder while a notice of intent to seek the death penalty is pending.

FN6. By its terms, CPL 220.60(2)(a) allows defendants who have pleaded not guilty to any indictment to withdraw the plea before a verdict, subject to certain limitations, including the limitations of CPL 220.10(5). Thus, CPL 220.60(2)(a) affects many cases unrelated to first degree murder.

FN7. While there is nothing objectionable in the portion of the two unconstitutional provisions that merely allows a defendant to plead guilty to first degree murder with the permission of the court and consent of the People, saving this portion of the provisions would not eliminate the Jackson problem. Since by statute only a jury can impose a death sentence and there is no procedure for impaneling a jury to sentence a defendant after a guilty plea (see, CPL 400.27), defendants could still avoid the possibility of death only by pleading guilty.

We realize this result will reduce the flexibility of both prosecutors and defendants who wish to 706 N.E.2d 1201

Page 10

92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177, 1998 N.Y. Slip Op. 11377 (Cite as: 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177)

plea bargain in capital cases. Indeed, our reversal in these cases may well have an ironic twist in that capital defendants will have fewer opportunities to avoid the possibility of the death penalty. We are also aware that the Supreme Court has not revisited Jackson and its progeny in 20-years, and that these cases might be decided differently today in light of the increased significance of plea bargaining and substantial changes in the administration of capital punishment. The fact remains, however, that although the Supreme Court itself may revisit is interpretation of Federal constitutional provisions, State courts are bound under the Federal Constitution to follow controlling Supreme Court precedent, and Jackson compels the result here.

While reducing the flexibility of plea bargaining in capital cases, excision of the unconstitutional provisions does not prevent pleas of guilty to first degree murder when no notice of intent to seek the death penalty is pending, since defendants in that situation face the same maximum sentence regardless of how they are convicted. Nor does the resulting statute prevent a defendant from pleading guilty to another offense not punishable by death, even when a notice of intent to seek the death penalty is pending, since nothing in Jackson prohibits imposing different penalties for different crimes. As the Supreme Court made clear in upholding the plea of a defendant charged with first degree murder who pleaded guilty to *630 second degree murder, a State "may prohibit the practice of accepting pleas to lesser included offenses under any circumstances," but "this is not the mandate of the Fourteenth Amendment and the Bill of Rights" (North Carolina v. Alford, 400 US, at 39, 91 S.Ct. 160). (See also, State v. Johnson, 134 N.H. 570, 575, 595 A.2d 498, 501, supra ["It is well settled that a statute cannot permit a defendant who insists upon a jury trial and is convicted of capital murder to be sentenced to death, while allowing a defendant who pleads guilty to the same crime to escape the possibility of such a sentence" (emphasis supplied)].) Thus, while a defendant may not plead guilty to first degree murder while a notice of intent to seek the death penalty is pending, plea bargaining to lesser offenses even when a notice of intent is pending, or to first degree murder in the absence of a notice of intent, remains unaffected.

Given our conclusion under the Federal Constitution, we do not reach appellants' arguments under the New York State Constitution. We agree with the Appellate Division that appellants' procedural contentions in Matter of Relin are without morit.

Accordingly, in each case, the order of the Appellate Division should be reversed, without costs, and judgment granted declaring that CPL 220.10(5)(e) and 220.30(3)(b)(vii) are unconstitutional and are deemed severed and stricken.

Judges BELLACOSA, SMITH, LEVINE, CIPARICK and WESLEY concur.

In each case: Order reversed, etc.

N.Y.,1998. Hynes v. Tomei 92 N.Y.2d 613, 706 N.E.2d 1201, 684 N.Y.S.2d 177, 1998 N.Y. Slip Op. 11377

Westlaw.

119 S.Ct. 2359

527 U.S. 1015, 119 S.Ct. 2359, 144 L.Ed.2d 254, 67 USLW 3614, 67 USLW 3753, 67 USLW 3757 (Cite as: 527 U.S. 1015)

Page 1

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Supreme Court of the United States Charles J. HYNES, District Attorney of Kings County, New York, et al., petitioners,

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Albert TOMEI, Justice, Supreme Court of New York, et al.

No. 98-1533. June 14, 1999.

Case below, 92 N.Y.2d 613, 684 N.Y.S.2d 177, 706 N.E.2d 1201.

Motion of respondent Angel Mateo for leave to proceed in forma pauperis granted. Motion of respondent Michael Hale for leave to proceed in forma pauperis granted. Petition for writ of certiorari to the Court of Appeals of New York denied.

U.S.,1999 Hynes v. Tomei 527 U.S. 1015, 119 S.Ct. 2359, 144 L.Bd.2d 254, 67 USLW 3614, 67 USLW 3753, 67 USLW 3757

Westlaw.

712 N.E.2d 692

93 N.Y.2d 327, 712 N.E.2d 692, 690 N.Y.S.2d 527, 1999 N.Y. Slip Op. 04493 (Cite as: 93 N.Y.2d 327, 712 N.E.2d 692, 690 N.Y.S.2d 527)

Page i

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Court of Appeals of New York.

The PEOPLE of the State of New York, Appellant,

Angel MATEO, Respondent.

May 13, 1999.

Defendant charged under 22-count indictment for criminal activities including four intentional murders moved to dismiss capital murder counts of indictment. The Monroe County Court, John J. Connell, J., granted motion, and state appealed. The Supreme Court, Appellate Division affirmed, 249 A.D.2d 894, 672 N.Y.S.2d 594, and state sought further appellate review. The Court of Appeals, Wesley, J., granted review and held that: (1) evidence submitted to grand jury did not establish that killings were "committed in a similar fashion" as required to support charge of capital murder, and (2) Court of Appeals would decline to provide calculus of "similarity" for future cases.

Affirmed.

West Headnotes

[1] Homicide 203 € == 1139

203 Homicide 203IX Evidence

203IX(G) Weight and Sufficiency

203k1138 First Degree, Capital, or Aggravated Murder

203k1139 k. In General. Most Cited

Cases

(Formerly 203k253(1))

Evidence presented to grand jury concerning four murders alleged to have been committed by defendant over 24-month period did not establish that killings were "committed in a similar fashion" as required to support charge of capital murder; victims were of different ethnic and racial backgrounds and ranged in age from 16 to 20, four different types of firearms were used to commit murders, motives for each shooting differed, as did wounds inflicted upon victims, and locations of killings were different. McKinney's Penat Law § 125.27, subd. I(a)(xi).

[2] Criminal Law 110 € 372(1)

110 Criminal Law

110XVII Evidence

110XVII(F) Other Offenses

110k372 Acts Part of Series Showing System or Habit

110k372(1) k. In General. Most Cited

Case

"Identity exception" for admission of uncharged crimes at trial is used in limited circumstances, when defendant employs some unique, unusual, or distinctive modus operandi in uncharged crime that is relevant to proving his identity as perpetrator of crime charged.

[3] Criminal Law 110 2 372(4)

110 Criminal Law

110XVII Evidence

110XVII(F) Other Offenses

110k372 Acts Part of Series Showing System or Habit

110k372(4) k. Homicide. Most Cited

Cases

Case law concerning identity exception for admission of uncharged crimes at trial does not establish template for defining phrase "committed in a similar fashion" under multiple-murder provision of capital murder statute. McKinney's Penal Law 125.27, subd. 1(a)(xi).

[4] Criminal Law 110 @== 1134.32

110 Criminal Law

110XXIV Review

110XXIV(L) Scope of Review in General 110XXIV(L)4 Scope of Inquiry 110k1134.32 k. Particular Issues in General, Most Cited Cases (Formerly 110k1134(3))

Court of Appeals would decline to provide calculus of "similarity" by which all future cases involving capital murder charges based upon multiple murders "committed in a similar fashion" might be considered; to do so would ignore relative nature and contextual considerations inherent in any analysis and application of "similarity" element, and process of setting prospective, applied particularization did not lend itself to more definite resolution of nature of "similarity" beyond determination of facts presented in particular case.

***528*328**693 Howard R. Relin, District Attorncy of Monroe County, Rochester (Wendy Evans Lehmann, of counsel), for appellent.

Office of Capital Defender, Rochester (Joseph T. Flood and William T. Easton, of counsel), for respondent.

*329 William J. Fitzpatrick, District Attorney of Onondaga County, Syracuse (James P. Maxwell, of counsel), and Susan L. Valle for New York State District Attorneys Association, amicus curiae.

OPINION OF THE COURT

WESLEY, J.

Defendant was charged under a 22-count indictment for an array of criminal activities, including the intentional murders of four people, in Rochester, New York. According to the People's proof at the Grand Jury, Joangel Toro and Johvanny Diaz were murdered in the City of Rochester during the early morning hours of August 6, 1995 while they stood next to each other at a telephone booth. Defendant and his cousin (who was allegedly hired to "kneecap" Diaz) armed themselves with .38 caliber and .45 caliber handguns, and sought out Diaz. Wearing stocking-style masks to disguise their identity, defendant and his cohort shot Diaz eight times, including three shots to the head. Toro was shot three times, including a shot to the head.

The Grand Jury also heard testimony concerning the murder of Peter Holley, who was shot on September 22, 1995 in the *330 City of Rochester. Following a report from defendant's cousin that a bicycle and gold chain were stolen from him, defendant took a sawed-off shotgun and, along with his cousin, drove around the west side of Rochester looking for the thief. The cousin identified Holley, whereupon defendant loaded his shotgun, pulled up behind Holley's vehicle and shot him in the neck and head.

Lastly, there was testimony before the Grand Jury that on November 2, 1996, Juan Rodriguez-Matos was forced at gunpoint into defendant's vehicle. Matos was driven to defendant's home, handcuffed ***529 and placed in a chair. Defendant interrogated Matos about the whereabouts of a former girlfriend. When Matos failed to provide satisfactory answers, defendant ordered that Matos be placed in a bathroom. Later. Matos was taken out of the bathroom, led to the basement, blindfolded and executed with a .25 caliber pistol shot through the left side of the head by either defendant or his wife, at defendant's command. Defendant then placed a plastic bag over Matos' head and left him lying on the basement floor until he died several hours later. Defendant, his wife and brother wrapped Matos' body in curtains and clothing, placed the body into a car and drove to a dead-end street where they dumped the body. FNI

> FN1. Defendant was convicted of first degree murder for the murder of Matos and was sentenced to death. He has filed a notice of appeal to this Court.

This appeal concerns counts 11 and 12 of the indictment, which charge defendant with murder in the first degree pursuant to Penal Law § 125.27 (1)(a)(xi). This section imposes criminal liability on anyone who;

"intentionally caused the death of two or more additional persons within the state in separate criminal transactions within a period of twentyfour months when committed in a similar fashion or pursuant to a common scheme or plan."

The People charged defendant on the theory that he acted "in a similar fashion" when, **694 within a 24-month period, he intentionally murdered Matos, Diaz, Toro and Holley.

County Court dismissed these counts, concluding that the evidence presented to the Grand Jury was insufficient to support a charge pursuant to this subsection. The court examined the legislative history of the statute and concluded that Penal Law & 125.27(1)(a)(xi) "reflects an executive and legislative *331 intent to deal with serial murders" (175 Misc.2d 192, 216, 664 N.Y.S.2d 981). The court also noted that the statute draws a distinction between murders "committed in a similar fashion" and those committed "pursuant to a common scheme or plan" as this distinction was developed in People v. Molineux, 168 N.Y. 264, 61 N.E. 286, and its progeny. Relying on our Molineux evidentiary jurisprudence, it concluded that "the context in which the statute was debated and passed by the Legislature, signed into law by the Governor and promoted by those two branches of government was aimed at protecting the public from the Son of Sam, Ted Bundy and Arthur Shawcross-type serial killers" (175 Misc.2d, at 217, 664 N.Y.S.2d 981). The court rejected the People's arguments that the murders were "committed in a similar fashion" and determined that "[t]here is nothing so unique, ritualistic, [or] signature-like about these homicides that would support the Grand Jury's decision to indict the defendant under this statute" (175 Misc.2d, at 218, 664 N.Y.S.2d 981).

The Appellate Division affirmed (249 A.D.2d 894, 672 N.Y.S.2d 594) although it did not embrace County Court's reasoning. The Court noted that "[e]ven affording the phrase 'in a similar fashion' its plain meaning * * * the evidence before the Grand Jury was legally insufficient * * * Because the murders did not adequately resemble each other with respect to motive, method, and surrounding circumstances, they were not 'committed in a simil-

ar fashion' " (id., at 895, 672 N.Y.S.2d 594). The Chief Judge of this Court granted leave to appeal.

The People argue that the Appellate Division and the trial court erred in their interpretation of the phrase "committed in a similar fashion" and that both courts applied an incorrect standard in assessing whether a prima facie case was established at the Grand Jury. According to the People, employing a "common sense" definition of this phrase leads to only one conclusion: that the evidence before the Grand Jury was sufficient to establish that ***530 the murders in question were "committed in a similar fashion."

Defendant, on the other hand, contends that our jurisprudence requires that Penal Law § 125.27 (1)(a)(xi) be construed according to the evidentiary principles of Molineux. In urging us to adopt County Court's reasoning, defendant argues that when words or phrases have a well-settled legal meaning in our jurisprudence, it is presumed that the Legislature understands that meaning when it adopts a statutory provision which includes that language (Matter of Moran Towing & Transp. Co. v. State Tax Comm'n, 72 N.Y.2d 166, 173, 531 N.Y.S.2d 885, 527 N.E.2d 763; McKinney's Cons.Laws of N.Y., Book 1, Statutes § 233).

[1] *332 We agree with the lower court determinations that the evidence presented to the Grand Jury was insufficient to establish that the killings at issue here were "committed in a similar fashion" pursuant to Penal Law § 125.27(1)(a)(xi) and therefore affirm.

It is clear that the Legislature and the Governor intended the phrase "committed in a similar fashion" to include serial killings (see, Governor's Mem. approving L.1995, ch. 1, 1995 McKinney's Session Laws of N.Y., at 2283; Bill Jacket, Assembly Codes Committee Mem. approving L.1995, ch. 1; id., Atty. Gen. Mem. regarding L.1995, ch. 1; see also, Assembly Debate on Assembly Bill A4843, Mar. 6, 1995, at 126, 336, 405, 406, 427 [statements of Assembly Members Straniere, Mur-

712 N.E.2d 692 93 N.Y.2d 327, 712 N.E.2d 692, 690 N.Y.S.2d 527, 1999 N.Y. Slip Op. 04493 (Cite as: 93 N.Y.2d 327, 712 N.E.2d 692, 690 N.Y.S.2d 527)

Page 4

taugh, McEneny and Tonko]). Contrary to defendant's contention, however, this phrase does not have a well-settled legal meaning in our jurisprudence.

[2][3] In analyzing the phrase, County Court looked to our case law concerning the identity exception for the admission of uncharged crimes at trial, first articulated in People v. Molineux (supra). This exception is used in limited circumstances, when the defendant employs some unique, unusual, or distinctive modus operandi in an uncharged **695 crime that is relevant to proving his identity as the perpetrator of the crime charged (see, People v. Beam, 57 N.Y.2d 241, 253, 455 N.Y.S.2d 575, 441 N.E.2d 1093; People v. Condon, 26 N.Y.2d 139, 144, 309 N.Y.S.2d 152, 257 N.E.2d 615; People v. Allweiss, 48 N.Y.2d 40, 47-48, 421 N.Y.S.2d 341, 396 N.E.2d 735). Although County Court correctly held that the proof fell short of establishing that the crimes were "committed in a similar fashion," we disagree with its conclusion that these cases establish a template for defining the phrase "committed in a similar fashion" under Penat Law § 125.27(1)(a)(xi). The precise phrase is not used in our Molineux line of cases, and nothing in the history of the death penalty statute suggests that the Legislature intended to adopt either the rationale or the standards governing the identity evidentiary exception to define this classification of capital murder.

FN2. Moreover, although County Court determined that there was "nothing so unique, ritualistic, [or] signature-like" about these homicides, it misinterpreted our Molineux jurisprudence in this regard. This Court has articulated the identity exception standard as "unique," "unusual" (People v. Condon, supra) and "distinctive" (People v. Beam, supra). However, in Beam we explicitly stated that in order to establish a modus operandi, "it is not necessary that the pattern be ritualistic for it to be considered unique" (id., at 253, 455 N.Y.S.2d 575, 441 N.E.2d 1093 [emphasis

added]).

[4] Both defendant and the People ask us to fashion a set of criteria to define the requirements of the statutory phrase at *333 issue; they ask us to provide a calculus of "similarity" by which all future cases might be plotted. To do so, however, would ignore the relative nature and contextual considerations inherent in any analysis and application of the "similarity" element. For this reason, the typical process by which this Court fulfills its adjudicative responsibility in setting prospective, applied particularization does not lend itself to a more definite resolution of the ***531 nature of "similarity" beyond the determination of the facts presented in this case.

Here, the murder victims were of different cthnic and racial backgrounds and ranged in age from 16 to 20. A .45 caliber handgun, a .38 caliber handgun, a .25 caliber handgun, and a sawed-off shotgun were the varied weapons used to commit these murders. The motives for each shooting differed, as did the wounds inflicted by defendant upon his victims. Moreover, the locations of these multiple killings were different: two occurred on a public sidewalk during the same incident, one occurred as defendant sat in a car on a public street and one transpired in defendant's basement while the victim was handcuffed and blindfolded. The common dcnominator of these crimes is that four young men were murdered by firearms. By any standard, the evidence before the Grand Jury was legally insufficient to establish the "committed in a similar fashion" element of the statute.

Accordingly, the order of the Appellate Division should be affirmed.

Chief Judge KAYE and Judges BELLACOSA, SMITH, LEVINE, CIPARICK and ROSENBLATT concur.

Order affirmed.

N.Y.,1999. People v. Mateo 712 N.E.2d 692 93 N.Y.2d 327, 712 N.E.2d 692, 690 N.Y.S.2d 527, 1999 N.Y. Slip Op. 04493 (Cite as: 93 N.Y.2d 327, 712 N.E.2d 692, 690 N.Y.S.2d 527) Page 5

93 N.Y.2d 327, 712 N.E.2d 692, 690 N.Y.S.2d 527, 1999 N.Y. Slip Op. 04493



811 N.E.2d 1053

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(Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

Page 1

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Court of Appeals of New York.

The PEOPLE of the State of New York, Respondent.

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Angel MATEO, Appellant.

Feb. 24, 2004.

Background: Defendant was convicted in the Monroe County Court, John J., Connell, J., of first degree murder, first degree kidnapping, and other counts, and was sentenced to death. Defendant appealed.

Holdings: The Court of Appeal, Kaye, C.J., held that:

- (1) defendant was prosecuted under unconstitutional two-tiered penalty scheme procedure, requiring that sentence of death be set aside:
- (2) prosecution did not posit in defendant's trial a theory of first degree murder factually inconsistent from that argued at his wife's trial;
- (3) command theory for accomplice liability for first degree felony murder did not have to be considered by jury apart from actual killer theory and jury did not have to be unanimous on a theory;
- (4) evidence was sufficient to support conviction of first degree felony murder;
- (5) defendant spontaneously, aggressively and voluntarily confessed to suit his own purposes; and
- (6) defendant opened door, during recross-examination of investigator, to admissibility of statements to police about three other murders.

Affirmed as modified by setting aside sentence of death and remitting for resentencing.

G.B. Smith, J., filed a dissenting opinion.

Rosenblatt, J., filed a dissenting opinion.

West Headnotes

[1] Sentencing and Punishment 350H @==1626

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(A) In General
350Hk1622 Validity of Statute or Regulatory Provision

350Hk1626 k. Procedure. Most Cited

Cases

Sentencing and Punishment 350H 2 1789(10)

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(G) Proceedings
350HVIII(G)4 Determination and Dispos-

ition

350Hk1789 Review of Proceedings to Impose Death Sentence

350IIk1789(10) k, Determination and Disposition. Most Cited Cases

Although defendant had received favorable pretrial ruling from trial court striking plea provisions from death penalty statute, defendant was prosecuted under unconstitutional two-tiered penalty scheme procedure, since by the time defendant's trial commenced, the intermediate appellate court had declared plea provisions constitutional, in a binding ruling, and state's highest appellate court did not rule those provisions unconstitutional until after defendant's trial, such that defendant could have sought to avoid exposure to death sentence only by waiving right to jury trial and pleading guilty, requiring that sentence of death be set aside. McKianey's CPL §§ 220.10, subd. 5(e), 220.30, subd. 3(b)(vii).

[2] Constitutional Law 92 \$\iiii 4629

92 Constitutional Law
92XXVII Due Process
92XXVII(H) Criminal Law
92XXVII(H)4 Proceedings and Trial

Page 2

92k4627 Conduct and Comments of

Counsel; Argument

92k4629 k. Prosecutor, Most Cited

Case

(Formerly 92k268(8))

Criminal Law 110 @= 1983

110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of Prosecuting Attorneys

110XXXI(D) i In General

110k1983 k. Assertion of Theory Inconsistent with Theory Previously Asserted. Most Cited Cases

(Formerly 110k700(1))

Prosecution did not violate due process by positing in defendant's trial a theory of first degree murder factually inconsistent from that argued at his wife's trial, where prosecution in wife's trial argued that wife pulled trigger at defendant's behest and argued in defendant's trial either that defendant was shooter or that wife pulled trigger under defendant's orders, defendant and accomplice both told police that they were the one who pulled the trigger, defendant was portrayed at both trials as the driving force behind the crime, and prosecution never discredited evidence previously offered to convict wife. U.S.C.A. Const.Amend. 14.

[3] Criminal Law 110 2033

110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of Prosecuting Attorneys

110XXXI(D)5 Presentation of Evidence 110k2032 Use of False or Perjured

Testimony

110k2033 k. In General. Most Cited

Cases

(Formerly 110k706(2))

A prosecutor may not knowingly present admissible but false information to a jury.

[4] Homicide 203 🗪 573(1)

203 Homicide

203II Murder

203k568 Parties to Offense

203k573 Accessories

203k573(1) k. In General, Most Cited

Cases

Homicide 283 €==614

203 Homicide

203III Homicide in Commission of or with Intent to Commit Other Unlawful Act

203III(B) Murder

203k611 Multiple Perpetrators

203k614 k. Aiding, Abetting, or Other Participation in Offense, Most Cited Cases

An actor may be found guilty as an accessory for first degree felony murder only when the theory proved by the prosecution is that the defendant commanded the killing; however, accessorial liability for other forms of first degree murder is not limited. McKinney's Penal Law §§ 20.00, 125.27 (1)(a)(vii).

[5] Criminal Law 118 €== 59(2)

110 Criminal Law

110VII Parties to Offenses

110k59 Principals, Aiders, Abettors, and Accomplices in General

110k59(2) k. Existence of Distinction.

Most Cited Cases

There is no distinction between liability as a principal and criminal culpability as an accessory.

[6] Constitutional Law 92 6-4752

92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law 92XXVII(H)7 Jury

> 92k4751 Necessity; Right to Jury Trial 92k4752 k. In General. Most Cited

Cases

(Formerly 92k267)

Page 3

Constitutional Law 92 5-4762

92 Constitutional Law 92XXVII Due Process 92XXVII(H) Criminal Law 92XXVII(H)7 Jury

92k4762 k. Unanimity. Most Cited

Cases

(Formerly 92k267, 92k268(2.1))

Criminal Law 110 €==872.5

110 Criminal Law
110XX Trial
110XX(K) Verdict
110k872.5 k. Assent of Required Number
of Jurors. Most Cited Cases

Homicide 203 €== 614

203 Homicide

203[11 Homicide in Commission of or with Intent to Commit Other Unlawful Act

203III(B) Murder

203k611 Multiple Perpetrators

203k614 k. Aiding, Abetting, or Other Participation in Offense. Most Cited Cases

Due process did not require that command theory for accomplice liability for first degree felony murder be considered by jury apart from actual killer theory, or that jury be unanimous on one theory or the other, where Legislature expressly intended that the two theories coexist in same subparagraph of statute, and there was no factual dispute that defendant kidnapped the victim and decided to execute victim, so that whether defendant pulled trigger or handed gun to his wife and commanded her to shoot victim were simply alternatives to a common end. U.S.C.A. Const.Amend. 14; McKinney's Penal Law § 125.27(1)(a)(vii).

[7] Criminal Law 110 6 366

110 Criminal Law
110XX Trial
110XX(J) Issues Relating to Jury Trial
110k866 k. Manner of Arriving at Ver-

diet. Most Cited Cases (Formerly 110k872.5)

There is no general requirement that the jury reach agreement on the preliminary factual issues which underlie the verdict.

[8] Homicide 203 €==1139

203 Homicide 203IX Evidence

203IX(G) Weight and Sufficiency

203kt138 First Degree, Capital, or Aggravated Murder

203kl 139 k. In General. Most Cited

Cases

Evidence was sufficient to support conviction of first degree felony murder, regardless of whether defendant pulled trigger or handed gun to his wife and commanded her to shoot, although there was no direct evidence that he told her to kill victim; there was no question that defendant engineered and carried out armed kidnapping of victim, that defendant decided to kill him, handcuffed him, and led him down to basement, or that victim died of an intentional gunshot wound to the head, defendant admitted that he had made up his mind to kill victim, that he gave gun to wife and stood near as she pulled trigger, and that he directed wife and brother in disposing of the body, and defendant also stated to police that he shot the victim himself, such that no matter which version of defendant's story the jury credited, it was justified in finding that defendant was squarely in charge of the kidnapping and shooting of victim.

[9] Criminal Law 110 5-1159.2(3)

I10 Criminal Law
110XXIV Review
110XXIV(P) Verdicts
110k1159 Conclusiveness of Verdict
110k1159.2 Weight of Evidence in
General

110k1159.2(3) k. Verdict Supported by Evidence. Most Cited Cases

811 N.E.2d 1053

2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

Criminal Law 110 €==1159.2(8)

110 Criminal Law

110XXIV Review

i 10XXIV(P) Verdicts

110k1159 Conclusiveness of Verdict

110k1159.2 Weight of Evidence in

General

110k1159.2(8) k. Inferences or Hy-

potheses from Evidence, Most Cited Cases

Standard of appellate review of the legal sufficiency of the evidence in a criminal trial is whether there is any valid line of reasoning and permissible inferences which could lead a rational person to the conclusion reached by the jury on the basis of the evidence at trial.

[10] Sentencing and Punishment 350H (1788(5)

350H Sentencing and Punishment

350HVIII The Death Penalty

350HVIII(G) Proceedings

350HVIII(G)4 Determination and Dispos-

ition

350Hk1788 Review of Death Sentence 350Hk1788(5) k. Scope of Review.

Most Cited Cases

In a capital case in which a death sentence has been imposed, Court of Appeals is constitutionally required to review the facts, and inquiry is distinct from traditional appellate review for legal sufficiency. McKinney's Const. Art. 6, §§ 3, 5.

[11] Criminal Law 110 @=== 1159.2(1)

110 Criminal Law

110XXIV Review

110XXIV(P) Verdicts

110k1159 Conclusiveness of Verdict

110k1159.2 Weight of Evidence in

General

110k1159.2(1) k. In General. Most

Cited Cases

Weight of the evidence review recognizes that even if all the elements and necessary findings are supported by some credible evidence, the court must examine the evidence further.

[12] Criminal Law 110 @== 1159.2(8)

110 Criminal Law

110XXIV Review

110XXIV(P) Verdicts

110k1159 Conclusiveness of Verdict

110k1159.2 Weight of Evidence in

Page 4

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110k1159.2(8) k. Inferences or Hy-

potheses from Evidence. Most Cited Cases

Criminal Law 110 (===1159.2(9)

110 Criminal Law

110XXIV Review

110XXIV(P) Verdicts

110k1159 Conclusiveness of Verdict

110k1159.2 Weight of Evidence in

General

110k1159.2(9) k. Weighing Evid-

ence. Most Cited Cases

Criminal Law 110 @=1159.3(3.1)

110 Criminal Law

110XXIV Review

110XXIV(P) Verdicts

110k1159 Conclusiveness of Verdict 110k1159.3 Conflicting Evidence

110k1159.3 Conflicting Evidence 110k1159.3(3) Verdict Supported

by Evidence

110k1159.3(3.1) k. In General.

Most Cited Cases

If based on all the credible evidence a different finding would not have been unreasonable, then the appellate court must, like the trier of fact below, weigh the relative probative force of conflicting testimony and the relative strength of conflicting inferences that may be drawn from the testimony; if it appears that the trier of fact has failed to give the evidence the weight it should be accorded, then the appellate court may set aside the verdict.

[13] Criminal Law 110 0 1159.4(2)

Page 5

110 Criminal Law

110XXIV Review

110XXIV(P) Verdicts

110k1159 Conclusiveness of Verdict 110k1159.4 Credibility of Witnesses 110k1159.4(2) k. Province of Jury

or Trial Court. Most Cited Cases

Great deference is accorded to the fact-finder's opportunity to view the witnesses, hear the testimony and observe demeanor.

[14] Criminal Law 110 =1159.2(1)

110 Criminal Law

110XXIV Review

110XXIV(P) Verdicts

110k1159 Conclusiveness of Verdict

110k1159.2 Weight of Evidence in

General

110k1159.2(1) k. In General. Most

Cited Cases

When an appellate court performs weight of the evidence review, it sits, in effect, as a "thirteenth juror."

[15] Criminal Law 110 €== 1159.2(7)

110 Criminal Law

General

110XXIV Review

110XXIV(P) Verdicts

110k1159 Conclusiveness of Verdiet 110k1159.2 Weight of Evidence in

110k1159.2(7) k. Reasonable

Doubt, Most Cited Cases

Appellate court must be sure that the evidence is of such weight and credibility as to convince it that the jury was justified in finding the defendant guilty beyond a reasonable doubt.

[16] Criminal Law 110 5=519(1)

110 Criminal Law

110XVII Evidence

110XVII(T) Confessions

110k519 Voluntary Character in General

110k519(1) k. What Confessions Are Voluntary. Most Cited Cases

Criminal Law 110 520(2)

110 Criminal Law

110XVII Evidence

110XVII(T) Confessions

110k520 Promises or Other Inducements 110k520(2) k. Sufficiency of Promise or Inducement in General. Most Cited Cases

Defendant spontaneously, aggressively and voluntarily confessed to suit his own purposes, although defendant claimed his will was overborne by investigators who allegedly led him to believe that he was receiving lenient treatment for family members in exchange for confession; defendant told investigators that he wanted to clear matters up but wanted his family released, investigator told defendant he would check on status of family members but never promised lenient treatment, and fact that investigators told defendant that family members were released after defendant acknowledged that gun was his did not render involuntary defendant's subsequent elaboration about murders.

[17] Criminal Law 110 €==519(1)

110 Criminal Law

110XVII Evidence

110XVII(T) Confessions

110k519 Voluntary Character in General

110k519(1) k. What Confessions Are

Voluntary, Most Cited Cases

To determine voluntariness, courts review all of the surrounding circumstances to see whether the defendant's will has been overborne.

[18] Constitutional Law 92 4 4664(1)

92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)5 Evidence and Witnesses

92k4661 Statements, Confessions, and

Admissions

Page 6

92k4664 Circumstances Under

Which Made; Interrogation

92k4664(1) k. In General. Most

Cited Cases

(Formerly 92k266.1(1))

Coercive police activity is a necessary predicate to the finding that a confession is not "voluntary" within the meaning of the Duc Process Clause of the Fourteenth Amendment, U.S.C.A. Const.Amend. 14.

[19] Criminal Law 110 0== 1158.13

110 Criminal Law

110XXIV Review

110XXIV(O) Questions of Fact and Findings 110k1158.8 Evidence

110k1158.13 k. Admission, Statements, and Confessions. Most Cited Cases

(Formerly 110k1158(4))

In appellate court's analysis of whether coercive police activity rendered confession involuntary, the hearing court's factual determinations, resting largely upon its assessment of the credibility of the testifying officers, are entitled to deference.

[20] Sentencing and Punishment 350H (20)

350H Sentencing and Punishment

350HVIII The Death Penalty

350HVIII(G) Proceedings

350HVIII(G)4 Determination and Dispos-

ition

350Hk1788 Review of Death Sentence 350Hk1788(5) k. Scope of Review.

Most Cited Cases

In a capital case, appellate court's obligation to weigh evidence and determine whether jury was justified in its conclusion beyond a reasonable doubt extends to the hearing court's finding as to the voluntariness of the confessions; these findings must be reviewed by the same standards applicable to a verdict of guilt.

[21] Criminal Law 110 \$\infty\$=412.1(1)

110 Criminal Law

110XVII Evidence

110XVII(M) Declarations

110k411 Declarations by Accused

110k412.1 Voluntary Character of

Statement

110k412.1(1) k. In General. Most

Cited Cases

Investigators were not required to dissuade defendant from making incriminating statements, or disabuse him of his fantasy that he could control the circumstances of the interrogation and win the release of his family.

[22] Criminal Law 110 412,1(4)

110 Criminal Law

110XVII Evidence

110XVII(M) Declarations

110k411 Declarations by Accused

110k412.1 Voluntary Character of

Statement

110k412.1(4) k. Interrogation and

Investigatory Questioning, Most Cited Cases
It is not an improper tactic for police to capital-

ize on a defendant's sense of shame or reluctance to involve his family in a pending investigation absent circumstances which create a substantial risk that a defendant might falsely incriminate himself.

[23] Criminal Law 110 €=>338(1)

110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance 110k338 Relevancy in General

110k338(I) k. In General. Most Cited

Cases

Evidence is relevant if it has any tendency in reason to prove any material fact.

[24] Criminal Law 110 5338(1)

110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance

Page 7

110k338 Relevancy in General 110k338(1) k. In General, Most Cited

All relevant evidence is admissible at trial unless barred by some exclusionary rule.

[25] Criminal Law 110 € 338(7)

110 Criminal Law

Cases

110XVII Evidence

110XVII(D) Facts in Issue and Relevance 110k338 Relevancy in General

110k338(7) k. Evidence Calculated to Create Prejudice Against or Sympathy for Accused. Most Cited Cases

Even where relevant evidence is admissible, it may still be excluded in the exercise of the trial court's discretion if its probative value is substantially outweighed by the potential for prejudice.

[26] Criminal Law 110 2 396(1)

110 Criminal Law

110XVII Evidence

110XVII(I) Competency in General 110k396 Evidence Admissible by Reason of Admission of Similar Evidence of Adverse Party 110k396(1) k. In General. Most Cited

Cases

When a party "opens the door" during crossexamination to excluded evidence, the opponent may seek to admit the excluded evidence in order to explain, clarify and fully clicit the question that has been only partially exposed on cross-examination.

[27] Criminal Law 110 \$\igcress 396(1)

110 Criminal Law

110XVII Evidence

110XVII(I) Competency in General 110k396 Evidence Admissible by Reason of Admission of Similar Evidence of Adverse Party 110k396(1) k. In General. Most Cited

Cases

The "opening the door" theory must necessarily be approached on a case-by-case basis.

[28] Criminal Law 110 (\$\iiii)338(7)

110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance 110k338 Relevancy in General 110k338(7) k. Evidence Calculated to Create Prejudice Against or Sympathy for Accused. Most Cited Cases

Criminal Law 110 €== 517(5)

110 Criminal Law

110XVII Evidence

110XVII(T) Confessions

110k517 Admissibility in General

110k517(5) k. Necessity and Admiss-

ibility of Entire Statement. Most Cited Cases

Defendant opened door, during cross-examination of investigator, to admissibility of statements to police about three other murders, to rebut defendant's claim that he falsely confessed in an unreliable interrogation to killing victim to cover for his wife; defense counsel asked questions about extent of defendant's leg injury, timing of events in interrogation, and concern for his family, but prosecution had been precluded from presenting evidence that defendant's motivation for confession was his belief that he could set terms of interrogation, claim responsibility for four murders, and win his family's release, such that probative value outweighed potential for prejudice in prosecution in which main issue was whether defendant was guilty of second degree murder as accomplice or intentional first degree murder either as shooter or as person who commanded the shooter.

[29] Criminal Law 110 € 338(7)

110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance 110k338 Relevancy in General 110k338(7) k. Evidence Calculated to

Create Prejudice Against or Sympathy for Accused. Most Cited Cases

Page 8

There is no litmus paper test for determining when the probative value of the evidence outweighs its potential for prejudice.

***402 *386 **1056 Kevin M. Doyle, Capital Defender, Albany (Barry J. Fisher, Beverly Van Ness and Andrew C. Shear of counsel), for appellant.

*390 Howard R. Relin, District Attorney, Rochester (Wendy Evans Lehmann and Arthur G. Weinstein of counsel), for respondent.

*392 Eliot Spitzer, Attorney General, New York City (Luke Martland, Peter B. Pope, Daniel Smirlock and Robin A. Forshaw of counsel), in his statutory capacity under Executive Law § 71.

*393 Bennett L. Gershman, White Plains, amicus curiae.

OPINION OF THE COURT

KAYE, Chief Judge.

Defendant's case, here on direct appeal from a jury verdict of guilt of first degree murder and a jury sentence of death, has a complex history that we know well (see People v. Mateo, 93 N.Y.2d 327, 690 N.Y.S.2d 527, 712 N.E.2d 692 [1999]; Matter of Relin v. Connell, 92 N.Y.2d 613, 684 N.Y.S.2d 177, 706 N.E.2d 1201 [1998]). Implicated in four murders and other violent crimes in Rochester, on December 19, 1996, defendant was charged in a 22-count indictment with, among other things, three ***403 **1057 counts of first degree murder. FNI Count 10 of the indictment, contested in this *394 appeal, alleged that on or about November 2, 1996, in the course of and in furtherance of first degree kidnapping, defendant intentionally caused the death of Juan Rodriguez-Matos, or, intending Matos' death, commanded another-his wife, Monica Szlekovics-to kill him (Penal Law § 125.27[1][a][vii]). In either circumstance, the cause of death was alleged to be a gunshot wound.

FN1. On January 17, 1997, the People filed notice of their intent to seek the death penalty pursuant to CPL 250.40(2).

Counts 11 and 12 of the indictment charged defendant with first degree murder on a serial killer theory that he acted "in a similar fashion" when, within a 24-month period, he intentionally murdered four individuals, including Matos. On defendant's motion, the trial judge dismissed those counts (175 Misc.2d 192, 664 N.Y.S.2d 981 [Monroe County Ct. 1997, Connell, J.]), and the Appellate Division affirmed (249 A.D.2d 894, 672 N.Y.S.2d 594 [4th Dept. 1998]). We affirmed, concluding that the evidence presented to the grand jury was insufficient to establish that the killings at issue were "committed in a similar fashion" under Penal Law § 125.27(1)(a)(xi) (People v. Mateo, 93 N.Y.2d 327, 690 N.Y.S.2d 527, 712 N.E.2d 692 [1999]).

Prior to trial, relying on United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 [1968], defendant challenged the plea provisions of New York's recently enacted death penalty statute (L. 1995, ch. 1). He argued that those provisions FN2 created a two-tiered system of punishment for the same offense, because only those who went to trial faced the death penalty while those who waived a jury trial and pleaded guilty did not. This scheme, he argued, impermissibly burdened his Fifth and Sixth Amendment trial rights. The trial judge, adhering to Jackson, held the plea provisions unconstitutional, but the Appellate Division subsequently declared them constitutional (Matter of Relin v. Connell, 251 A.D.2d 1041, 674 N.Y.S.2d 192 [4th Dept. 1998]). Defendant thereafter went to trial, while an appeal of the Appellate Division ruling was pending in this Court. Ultimately, bound by Jackson, we reversed, struck the plea provisions as unconstitutional and, in a consolidated appeal, severed them from the statute (Matter of Hynes v. Tomei; Matter of Relin v. Connell, 92 N.Y.2d 613, 684 N.Y.S.2d 177, 706 N.E.2d 1201 [1998]).

FN2. CPL 220.10(5)(e); 220.30(3)(b)(vii).

I.

The facts of defendant's case, elicited at trial, are no less complicated than its legal history. The

main participants in the events of October 8 through November 6, 1996 were defendant (then age 27), his wife (Monica, 20), his estranged girfriend *395 (Janette Sanchez, 25) and his brother (Victor Cordero, 16). Forty-nine witnesses, many of them civilians who had crossed paths with defendant, testified for the People. The defense called one witness, to testify regarding a bullet wound in defendant's leg.

Though married to Monica, defendant had been living with Janette since November of 1995 in what was, to say the least, an abusive relationship. Janette told the jury that soon after she and her three young children moved in with defendant, he began terrorizing her: he hit her in the face, beat her in front of her children, threatened to stab her, and more than once aimed a gun at her and threatened to pull the trigger. At one point, he shot a ***404 **1058 round into the floor of their bedroom in front of her.

As Janette testified, on October 8, 1996, in a fit of rage over a busy telephone line, defendant hit her, and then began hitting her five-year-old daughter with a belt. Defendant locked them in the house. and left. Janette and her daughter escaped through a bedroom window. Janette then sought shelter at Alternatives for Battered Women, and remained there with her children. Three days later, on October 11th. defendant and Monica, in pursuit of Janette, showed up at 966 Avenue D, the home of Maria Sanchez (Janatte's sister), Jose Roman (Maria's boyfriend) and Maria's four-year-old daughter. Jose explained to the jury that he opened the door and defendant pointed a gun at his forehead. Defendant handcuffed him behind his back, put the gun to the back of his head and told him to lie down. For more than three hours, defendant and Monica held the family hostage while defendant ordered Maria to keep phoning Janette. Finally, Maria reached her and after defendant spoke to her, he and Monica left.

Throughout October, defendant persisted in his efforts to find Janette. He sent Monica to the shelter

to give Janette his pager number so that she could call him. On October 15th, while Janette was at the Department of Social Services, defendant and Monica appeared, and defendant coaxed Janette into going to his apartment, without Monica. Soon after, Monica appeared at the door with a gun. She left, and defendant told Janette that he wanted to kill himself. Instead, he pointed the gun at Janette's chest and said he would kill her because he could not allow her to be with anyone else. Janette later managed to return to the shelter. Two days later. defendant and Monica again accosted Janette on the street. When she ran to a nearby office, defendant followed her inside but security guards called *396 the police, Between October 8th and October 24th, defendant kept calling and leaving messages for Janette at the shelter. On October 24th, fearful that defendant would harm Maria. Janette went back to defendant for six days. On October 29th, a social worker from Child Protective Services helped Janette and the children move to another shelter. No longer reachable at Alternatives for Battered Women, it seemed that Janette had disappeared.

As defendant later conceded to police, his attack on the child had ended his relationship with Janette. He admitted searching the city for her, and acknowledged that he would hurt anyone who got in his way. One unfortunate victim was Juan Rodriguez-Matos, age 20. On or about November 2, 1996, defendant was driving around the east side of Rochester with Monica and Victor, still looking for Janette. Defendant spotted Matos on the street, and remembered that he and Janette had a friend in common, Glyselle, who might have information about Janette. Defendant ordered Monica, who was driving, to circle the block so he could confront Matos. He then directed her to stop, got out of the car and approached Matos, demanding to know Glyselle's address. When Matos refused to answer, defendant forced him into the car at gunpoint and they drove to defendant's house. There, defendant handcuffed Matos, brought him into the bathroom and questioned him. Matos finally gave defendant an address, but by that time defendant had already decided to take him to the basement and execute him. Defendant told police that he made this decision and Monica and Victor were following his orders-Monica and Victor did what he told them to do. $\stackrel{FN3}{FN3}$

FN3. During an eight-hour interrogation beginning at 5:45 P.M. on November 6, 1996, defendant made a lengthy confession to the Matos murder, three other homicides and the Avenne D incidents. Those admissions were subsequently reduced to written statements, signed by defendant, about each crime. Our later references to the "confession" are to defendant's statements during the interrogation in their entirety.

***405 **1059 Defendant admitted to the investigators that while in the basement, he put a dark handkerchief over Matos' eyes, and then "shot the dude in the left side of his head as he stood there." Matos fell on the floor, but was still alive, so defendant put a plastic bag over his head. He died some time later. In the middle of the night, defendant, Monica and Victor wrapped the body in a blanket and some curtains and left it in an alley near where defendant used to work. A subsequent autopsy of Matos' *397 body revealed that, although he aspirated gastric contents into his lungs, the cause of death was the gunshot wound to the head. Defendant later told police during questioning that he had handed the gun to Monica and that, in actuality, it was she who pulled the trigger and he was "surprised." For the most part, he insisted that he had fired the fatal shot, but he alternated back and forth. In a third version, defendant claimed that even though Monica had pulled the trigger, he was a "king" and would take the blame because he wanted the death penalty and could not "do a hundred years in jail." When police typed his written statement, defendant claimed to have pulled the trigger himself.

On November 6th, defendant, Monica and Victor carried out a second home invasion at 965 Avenue D. On that day, they went back to Maria and Jose's apartment house, but hid in the basement. Defendant still wanted to find Janette, and told Monica and Victor that Janette had filed a police complaint against him. Defendant later explained, "[that was a lie and I was using them to help me get my girl back." After waiting about three hours, defendant said "let's go upstairs." Defendant told Monica to knock on the first floor apartment door (Maria lived on the second floor); when the occupant-Willie McWilliams-opened the door, defendant put a gun to his face.

McWilliams testified that defendant hit him on the left side of his head with the gun, and told him to "get on the floor." A stranger to defendant and his objectives, McWilliams dropped to his knees and Victor handcuffed him. Asked who else was in the house, first McWilliams said "nobody," but then said that his girlfriend and son were sleeping. Defendant checked the other room, grabbed a knife, came back, and said, "I never taken out a little kid before." Victor said, "we got to take them all out." McWilliams yelled out to his girlfriend to run. Defendant stepped on McWilliams' back and cut him across the throat. When McWilliams reared up, defendant fell backwards, began shooting and struck him in the shoulder and back. One of McWilliams' handcuffs came loose and he hit defendant in the face. Defendant fell again, dropping his gun, and apparently was shot in the leg during the fray. Defendant and Victor took off, leaving Monica behind. McWilliams held her down while his girlfriend, who escaped to a neighbor's house, called 911. After the police arrested Monica at the scene, she provided information leading to the arrest of defendant and Victor. They were apprehended later that day in a car with defendant's mother, another brother and a cousin.

*398 Now, following a jury trial, defendant stands convicted of first degree murder and other charges. FN4 After a penalty proceeding***406 **1060 in which he presented mitigating evidence, the jury sentenced defendant to death.

FN4. On November 12, 1998, the People

2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143-(Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

filed an amended trial indictment that eliminated the counts pertaining to the three other murders. Count 10 of the original indictment was renumbered count 5 for trial. In addition, defendant was indicted on three counts of second degree kidnapping for the home invasion on October 11, 1996 (counts 1-3). He was charged with second degree felony murder for the killing of Matos (count 6) and first degree kidnapping for the abduction of Matos (count 7). In connection with the home invasion on November 6, 1996, he was indicted on attempted first degree murder in the course of and in furtherance of a burglary (count 8), kidnapping in the second degree (count 9), first degree burglary (count 10) and first degree assault (count 11). He also faced two counts of third degree criminal possession of a weapon for possessing firearms on October 11, 1996 and November 6, 1996 (counts 4, 12). The jury found defendant guilty on all 12 counts.

Defendant's mandatory appeal, raising 22 issues, was noticed February 11, 1999, and comes to us directly from the trial court pursuant to our unique jurisdiction in death penalty cases (N.Y. Const., art. V1, § 3[b]; CP1. 450.70 [1]). FN3 Defendant argues that Matter of Hymes v. Tomei, 92 N.Y.2d 613, 684 N.Y.S.2d 177, 706 N.E.2d 1201 [1998] and People v. Harris. 98 N.Y.2d 452, 749 N.Y.S.2d 766, 779 N.E.2d 705 [2002] require overturning his death sentence, because he went to trial under what we have held to be an unconstitutional two-tiered penalty scheme. We agree, and conclude that the death sentence must be set aside.

FN5. Defendant also filed an amended notice of appeal dated April 13, 1999, which sought to appeal from the judgment and, in addition, from County Court's March 11, 1999 order denying his renewed CPL 330.30 motion. The appeal from County

Court's order should be dismissed because the order is not directly appealable to this Court under CPL 450.70.

Defendant also contends that his right to due process was violated by the prosecutor, on the ground that inconsistent factual theories were presented at his and Monica's separate trials. We disagree, and determine that the prosecutor's actions did not breach defendant's right to a fair trial. Defendant claims that the jury verdict of guilt of first degree felony murder is against the weight of the evidence. We disagree, and in our review of the facts conclude that the weight of the evidence comports with the jury determination that defendant kidnapped Matos, and in the course of and in furtherance of that crime, either intentionally shot and killed him or commanded his wife and cohort, Monica, to do so.

FN6. We note that defendant raises not a single challenge to the trial court's rulings related to the two-month jury selection process.

*399 Finally, defendant maintains that certain evidentiary errors, including the admission of his statements about three other murders, mandate the reversal of his conviction. We disagree. Defendant's trial strategy opened the door to the admission of his voluntary statements, to rebut the assertions that he gave false statements to police exaggerating his role in the Matos murder in order to exculpate his wife.

П.

[1] Defendant contends that an Appellate Division declaration made prior to his trial-holding the plea provisions of New York's death penalty statute constitutional-subjected him to an unconstitutional penalty scheme, and that our subsequent decisions in Matter of Hynes v. Tomei and People v. Harris mandate that we set aside his death sentence. In Hynes, we struck the plea provisions as unconstitutional and severed them from the statute, on the ground that they created a two-tiered punishment

811 N.E.2d 1053 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite 4s: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399) Page 12

scheme that burdened ***407 **1061 the rights of defendants who went to trial (92 N.Y.2d 613, 684 N.Y.S.2d 177, 706 N.E.2d 1201 [1998]). In Harris, we set aside the death sentence of a defendant who went to trial while the plea provisions were in effect (98 N.Y.2d 452, 494-496, 749 N.Y.S.2d 766, 779 N.E.2d 705 [2002]). We break no new ground by applying these precedents, and dispose of defendant's Hynes claim first, striking defendant's sentence of death.

The People and the Attorney General maintain that in this case, the trial court's order declaring the plea provisions unconstitutional controlled the course of the litigation, and that defendant actually went to trial under a lawful statute. The question before us is whether a subsequent declaration by the Appellate Division, Fourth Department, that the plea provisions were constitutional (251 A.D.2d 1041, 674 N.Y.S.2d 192 [1998]), rendered those provisions operative in his case. The People and the Attorney General concede that if the plea provisions were in effect during defendant's case, the death sentence must be vacated.

A brief procedural history is required to frame the issue. Defendant was indicted on first degree murder and other charges on December 19, 1996. and the prosecution filed its notice of intent to seek the death penalty pursuant to CPL 250.40(2) on January 17, 1997. On April 24, 1997, defendant moved to strike the death notice and the plea provisions of New York's death penalty statute as unconstitutional, relying on United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 [1968]. In Jackson, the United States Supreme Court invalidated the death penalty provision of the *400 Federal Kidnaping Act (18 USC § 1201[a]) because, in relevant part, by encouraging jury waivers to avoid the death penalty, the provision impermissibly burdened defendants' Fifth and Sixth Amendment rights. Relying on Jackson, the trial court, on August 25, 1997, granted defendant's motion to the extent that it declared the plea provisions unconstitutional (175 Misc.2d 192, 664 N.Y.S.2d 981 [1997]).

The People then commenced a CPLR article 78 petition in the Appellate Division seeking a writ of prohibition to bar both the trial judge and defendant from enforcing the order declaring the plea provisions unconstitutional. On June 10, 1998, the Fourth Department converted the article 78 proceeding to a declaratory judgment action and held the plea provisions constitutional (251 A.D.2d 1041, 674 N.Y.S.2d 192 [1998]). Jury selection commenced on September 1, 1998 and the jury was sworn on November 9, 1998. On December 3, 1998, the jury found defendant guilty of first degree murder and other charges, and on December 16, 1998, sentenced him to death.

Six days later, on December 22, 1998, this Court reversed the order of the Fourth Department, as well as a comparable order of the Second Department, and struck the plea provisions as unconstitutional under authority of Jackson, 92 N.Y.2d 613, 684 N.Y.S.2d 177, 706 N.E.2d 1201 [1998]. Shortly thereafter, defendant moved to set aside his death sentence, relying on Hynes. On January 15, 1999, the trial judge summarily denied the motion and ordered the death sentence to be carried out based on the jury's determination. Defendant now contends that the Fourth Department ruling upholding the plea provisions was in effect in his case when he went to trial and therefore the trial was conducted under a Jackson-violative statute. We agree.

To be sure, defendant received a favorable pretrial ruling from the trial court striking the plea provisions from the statute. By the time that defendant's trial ***408 **1062 commenced, however, the Appellate Division had declared the plea provisions constitutional, in an action by this District Attorney against this trial judge and this defendant. That ruling was binding in the Fourth Department (see e.g. Duffy v. Horton Mem. Hosp., 66 N.Y.2d 473, 475, 497 N.Y.S.2d 890, 488 N.E.2d 820 [1985]). Based on that binding precedent, we conclude that defendant could have sought to avoid exposure to a death

2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

sentence only by waiving his right to a jury trial and pleading guilty.

Matter of Morgenthau v. Erlbaum, 59 N.Y.2d 143, 464 N.Y.S.2d 392, 451 N.E.2d 150 [1983] does not mandate a different result in this case. We held in Erlbaum *401 that "a declaratory judgment attacking a criminal court's interlocutory ruling may be granted when the controversy is over the validity of a statute, ... and there is no immediate attempt to prevent the criminal court from proceeding on the course which it has charted by its ruling" (id. at 151-152, 464 N.Y.S.2d 392, 451 N.E.2d 150), Erlbaum, moreover, contemplates that an individual defendant will not be a party to the declaratory judgment action. (Here, defendant was a party.) The Appellate Division order-determining the validity of the statute-did not reverse the trial court's order, or immediately prevent the trial court from proceeding on its course. At the time the Appellate Division ruled, the case was several months from being tried. There was no ensuing delay of trial. Indeed, defendant went to trial while the Appellate Division ruling, reinstating the plea provisions. was simultaneously challenged in this Court. Thus, the "concern over obstructing the speedy resolution of cases" (id. at 152, 464 N.Y.S.2d 392, 451 N.E.2d 150) did not arise. In these circumstances, Erlbaum's policy considerations-protecting criminal trials from interference, or even undoing, by interlocutory appeals-were not implicated.

Exactly the situation Jackson held untenable, however, occurred here. Like any other capital defendant in the Fourth Department, had defendant sought to waive his right to a jury trial and plead guilty-with the appellate court's ruling in hand-it was highly improbable that the trial judge would have ignored the order of the Appellate Division. Thus, the fortuitous timing of defendant's trial, sandwiched in between the Appellate Division ruling and this Court's decision striking the plea provisions, contributed to a unique situation in which defendant's Fifth and Sixth Amendment trial rights were burdened and he was tried under an unconsti-

tutional two-tiered penalty scheme. The sentence of death therefore must be set aside. We turn next to defendant's challenges to the verdict of guilt.

III.

Defendant contends that the prosecutor violated due process by positing, in his trial, a theory of first degree murder factually inconsistent from that argued at Monica's trial. He also maintains that the trial court erroneously instructed the jury that it could find defendant guilty of first degree murder whether he shot Matos or commanded the killing, and that the jury verdict on that count is against the weight of the evidence.

A. The Prosecution's Theories

[2] Monica was prosecuted separately-about a year before defendant's trial-on the theory that she was guilty, as the *402 shooter, of intentional first degree felony murder (Penal Law § 125.27[1][a] [vii]) in the course of and in furtherance of first degree kidnapping, in a noncapital trial. The jury acquitted her of that count but convicted her of second degree felony murder***409 **1063 and first degree kidnapping. At his trial, defendant sought to preclude the prosecution from arguing in his case that he was the shooter, on the ground that the People previously dismissed that theory in Monica's case.

The trial court rejected defendant's claim, determining that at defendant's trial, the People were free to argue alternatively that either defendant or Monica-commanded by defendant-pulled the trigger. The court concluded that "the People are merely intending to argue reasonable views of the evidence that could be drawn from the testimony and physical evidence" (177 Misc.2d 817, 818, 676 N.Y.S.2d 908 [Monroe County Ct. 1998, Connell, J.]).

[3] Defendant claims that by advancing purportedly inconsistent theories, the People corrupted the truth-finding function of the trial. It is settled that a prosecutor may not knowingly present admissible but false information to a jury (People v.

811 N.E.2d 1053 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

Pelchut, 62 N.Y.2d 97, 105, 476 N.Y.S.2d 79, 464 N.E.2d 447 [1984]). Of course, in the circumstances of this case, where defendant and Monica implicated not only themselves but also each other, the People could not know who the shooter was-only defendant and Monica knew.

Defendant contends that at the separate trials, the prosecution presented diametrically opposed versions of his role in the shooting. To be sure, at Monica's trial for first degree felony murder, the prosecutor argued that Monica shot Matos. But at defendant's trial, the prosecutor presented that very same proposition, again arguing that Monica intentionally shot him, albeit under defendant's orders. Defendant was not "resculpted" from a mere sideliner to a main participant (cf. United States v. Salerno, 937 F.2d 797, 812 [2d Cir.1991], revd. on other grounds 505 U.S. 317, 112 S.Ct. 2503, 120 L.Ed.2d 255 [1992]). In both trials, defendant was portrayed as the "driving force" behind the crime. Additionally, the People maintained that, based on defendant's own written statement, it was also reasonable to conclude that he was the one who pulled the trigger. Thus, defendant's jury considered the same argument that the prosecutor presented at Monica's trial, and also considered a theory supported by defendant's own words.

In assessing this claim, we find Nguyen v. Lindsey, 232 F.3d 1236 [9th Cir.2000] persuasive. There, an innocent bystander was killed in the crossfire of a shootout between two rival gangs; *403 two combatants were charged with murder and separately tried. At the trial of defendant Phung, the prosecutor presented evidence that Phung shot first. At the trial of defendant Nguyen, the prosecutor introduced Nguyen's own statement to police that a cohort in his car, Cholo, had fired first. The Ninth Circuit held that the prosecutor did not pursue fundamentally inconsistent theories in violation of due process, even though different evidence was presented at each trial (id. at 1241). Although the prosecutor made divergent arguments at each trial as to who fired the first shot, the court concluded that these arguments were consistent with the evidence actually adduced at each trial (id. at 1240).

Here, as in Nguyen, the evidence against Monica at her trial was her own statement that she killed Matos after defendant gave her the gun and whispered in her ear to shoot him in the head. FN7 The evidence at defendant's trial was his self-incriminating admissions that he intended to execute the victim, and either shot the victim or commanded Monica to do so.

FN7. Monica's jury also heard that she had previously blamed defendant for shooting Matos.

***410 **1064 Nguyen also distinguished Thompson v. Calderon (120 F.3d 1045 [9th Cir. 1997] [en bane] [plurality op.], revd on other grounds 523 U.S. 538, 118 S.Ct. 1489, 140 L.Ed.2d 728 [1998]), relied on by defendant. In Thompson, separate trials were conducted of two suspects in the rape and murder of Ginger Fleischli. Testimony by jaithouse informants at a preliminary hearing revealed that defendant Leitch wanted Fleischli dead because she was interfering with his attempts to reconcile with his ex-wife (120 F.3d at 1055). On the night of the murder, defendant Thompson allegedly had consensual sex with Fleischli. Afterward, Leitch arrived and he and Thompson killed her.

At Thompson's trial, the prosecution presented other witnesses who testified that Thompson had confessed to raping and killing Fleischli before Leitch got home, and that he killed her to prevent her from reporting the rape (id. at 1056). Thompson was convicted of first degree murder and sentenced to death. Then, at Leitch's trial, the prosecutor called mostly defense witnesses from Thompson's trial, who testified about Leitch's motive for killing Fleischli, his threats against her and his violent disposition. A plurality of the court concluded that in Leitch's trial, the prosecutor returned to his original theory and discredited the very evidence he had previously offered in *404 Thompson's trial, so that

Thompson, rather than Leitch, suffered from the due process deprivation (id. at 1059). In Nguyen, by contrast, the court found it compelling that both defendants could be found guilty of the same crime because of its nature (232 F.3d at 1240).

The circumstances of defendant's case are closer to Nguyen than Thompson. The prosecutor never discredited the central evidence he previously offered to convict Monica, but instead used that evidence to prove that defendant commanded her to shoot Matos. Thus, as the People sought to prove, both defendants could have been guilty of first degree murder. The argument that defendant was the shooter was also properly adduced at trial, based on his admissions. In these circumstances, the People should not have to choose one defendant over the other to prosecute as the shooter.

Defendant also argues that at Monica's trial, she was portrayed by the People as acting with free will, whereas at defendant's trial, the evidence showed that she was abused and acted at defendant's command. These positions are not inherently inconsistent. At Monica's trial, the People were countering her duress defense, and sought to show that she was capable of freely committing the murder. The prosecution acknowledged that Monica was abused, but argued that the abuse did not mean she could establish duress: "What was the abuse? What did it consist of? ... [W]hat effect does it have on this case? ... [Y]ou're going to hear that Angel Mateo was a bad man, and I anticipate you are going to hear that he was the driving force here, but I also anticipate you are going to hear that Monica Szlekovics was involved." At defendant's trial. by contrast, duress was not in the case. The People were entitled to show that, fearful or not, Monica could have willingly followed defendant's command,

B. The Command or Actual Killer Instruction

Defendant claims that it was error for the trial court to instruct the jury that it could convict defendant of first degree murder either as a commander or shooter. Penal Law § 125.27(1)(a) (vii), the

"fclony murder" provision of the first degree murder statute (see ***411**1065People v. Harris, 98 N.Y.2d 452, 475-477, 749 N.Y.S.2d 766, 779 N.E.2d 705 [2002]), states that a person is guilty of first degree murder when, with intent to cause the death of another person, he causes the death of that person or a third person, and:

"the victim was killed while the defendant was in *405 the course of committing or attempting to commit and in furtherance of ... kidnapping in the first degree ...; provided however, the victim is not a participant ... and, provided further that, unless the defendant's criminal liability under this subparagraph is based upon the defendant having commanded another person to cause the death of the victim or intended victim pursuant to section 20.00 of this chapter, this subparagraph shall not apply where the defendant's criminal liability is based upon the conduct of another pursuant to section 20.00 of this chapter." FNS

FN8. The first degree kidnapping statute, Penal Law § 135.25(3), provides that a person is guilty of that crime when he or she abducts another person who dies during the abduction or before being able to return or to be returned to safety.

In turn, Penal Law § 20.00, the accessorial liability provision, provides that "[w]hen one person engages in conduct which constitutes an offense, another person is criminally liable for such conduct when, acting with the mental culpability required for the commission thereof, he solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct."

[4] Based upon the plain language, it is clear that the Legislature has set forth a single circumstance by which to impose accessorial liability for first degree felony murder. An actor may be found guilty as an accessory under Penal Law § 125.27 (1)(a)(vii) only when the theory proved by the prosecution is that the defendant commanded the

killing (see People v. Couser, 94 N.Y.2d 631, 635, 709 N.Y.S.2d 155, 730 N.E.2d 953 [2000] ["(a) defendant's criminal responsibility for murder in the first degree can be based upon the conduct of another when that defendant 'commanded another person to cause the death of the victim or intended victim' "(emphasis in original)]).

By comparison, the Legislature chose not to limit accessorial liability for the other 12 subparagraphs of the first degree murder statute (see generally People v. Cahill, 2 N.Y.3d 14, 777 N.Y.S.2d 332, 809 N.E.2d 561 [2003] for a discussion of 13 aggravating factors of first degree murder statute). It is only the felony murder aggravator that is so limited. Indeed, the Assembly Codes Committee memorandum explains that the felony murder provision "excludes defendants whose criminal liability under this subparagraph is based upon the conduct of another person, unless the defendant commanded *406 another person to cause the death of the victim or intended victim" (Mem. of Assembly Codes Comm., Bill Jacket, L. 1995, ch. 1, at 22 [emphasis added]).

> FN9. See Donnino, Practice Commentary, McKinney's Cons. Laws of N.Y., Book 39, Penal Law § 125.27, at 390.

[5] The legislative history supports the conclusion that, while the Legislature limited accessorial liability for first degree felony murder to "command[ing]," it did nothing to upset the settled principle that "[t]here is no distinction between liability as a principal and criminal culpability as an accessory" (People v. Duncan, 46 N.Y.2d 74, 79-80, 412 N.Y.S.2d 833, 385 N.E.2d 572 [1978]). When it enacted the statute, the Legislature was surely aware of our decisions interpreting the accessorial***412 **1066 liability statute (see generally People v. Robinson, 95 N.Y.2d 179, 183-184, 711 N.Y.S.2d 148, 733 N.E.2d 220 [2000]). If the Legislature had wanted to set forth "command" as a separate element of the first degree felony murder FN10 offense, moreover, it would have done so.

FN10. Prior to trial, defendant moved to dismiss the first degree murder count as duplicitous because it charged him with the killing as the shooter and as the commander of another person. While defendant no longer presses his claim of duplicitous counts on appeal, the trial court's reasoning is necausive on the issue before us:

"[t]he language 'commanded another person' is not an additional element to the offense of an intentional killing in the course of and in furtherance of a felony. Rather, under this statute, the People may charge the defendant as a principal, or in a limited situation, as an accomplice" (175 Misc.2d at 207, 664 N.Y.S.2d 981).

[6] The question here is whether due process requires that the command theory be considered by the jury apart from the actual killer theory, and that the jury be unanimous on one theory or the other, even though the Legislature expressly intended that the two coexist in the same subparagraph of the statute. FN11 We conclude it does not.

FNII. Before the case was submitted to the jury, defendant requested that the court instruct the jury that, to find him guitty, it had to be unanimous as to whether he shot and killed Matos, or commanded his wife to do so. The trial court rejected defendant's request, and instructed the jury that:

"Your verdict, as I have mentioned before on each of these charges, has to be unanimous. That means all twelve have to agree upon a verdict. All twelve of you[] deliberating on a case do not have to agree that the Defendant was the shooter nor do all twelve deliberating on the case have to find that the Defendant was the commander. It is sufficient that all twelve find the Defendant was either the shooter or the commander under 811 N.E.2d 1053 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

Page 17

Murder in the First Degree."

The trial court's instructions comported with due process. In Schad v. Arizona, 501 U.S. 624, 111 S.Ct. 2491, 115 L.Ed.2d 555 [1991], the United States *407 Supreme Court analyzed an Arizona statute that defined first degree murder as, among other things, premeditated murder or murder committed during a felony. Justice Souter, writing for a plurality, observed that there is a "point at which differences between means become so important that they may not reasonably be viewed as alternatives to a common end, but must be treated as differentiating what the Constitution requires to be treated as separate offenses" (501 U.S. at 633, 111 S.Ct. 2491).

The Schod plurality adopted a case-by-case approach of analyzing the problem, while deferring to the states: "[i]f a State's courts have determined that certain statutory alternatives are mere means of committing a single offense, rather than independent elements of the crime, we simply are not at liberty to ignore that determination and conclude that the alternatives are, in fact, independent elements under state law" (id. at 636, 111 S.Ct. 2491). The plurality observed that "[w]here a State's particular way of defining a crime has a long history, or is in widespread use, it is unlikely that a defendant will be able to demonstrate that the State has ... defined as a single crime multiple offenses that are inherently separate" (id. at 640, 111 S.Ct. 2491).

Although New York's current first degree murder statute is recently enacted, the term "command," under our law, has its roots in the 1907 Penal Code, which defined a "principal" as "[a] person concerned in the commission of a crime whether he directly commits the act constituting the offense or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly***413 **1067 counsels, commands, induces or procures another to commit a crime" (People v. Farmer, 196 N.Y. 65, 76, 89 N.P. 462 [1909] [Bartlett, J., dissenting, quoting Penal Code of 1907 § 29] [emphasis added]; see also

Couser, 94 N.Y.2d at 637, 709 N.Y.S.2d 155, 730 N.E.2d 953). FN12 Almost 100 years ago, then, a commander was not only just as culpable as a person who directly committed an offense, but also was indeed a principal.

FN12. We reject as meritless defendant's contention that the trial court erred in instructing the jury on the definition of "command." Indeed, in *Couser*, we cited with approval the trial court's definition in *Mateo* [94 N.Y.2d at 636-637, 709 N.Y.S.2d 155, 730 N.E.2d 953).

In a related vein, Schad is instructive in its observation that if two possibilities for proving an element exist, an appropriate inquiry is whether a moral equivalence between the two could reasonably be found (501 U.S. at 644, 111 S.Ct. 2491). If so, it is enough to rule out the argument that any hypothetical "inoral disparity bars treating them as alternative means to satisfy" the element of a *408 single offense (id.). We have a long history of treating actual killers and commanders as moral equivalents (see Farmer, 196 N.Y. at 70-71, 89 N.E. 462). [N.13]

FN13. School itself cited People v. Sullivan, 173 N.Y. 122, 65 N.E. 989 [1903] as the leading case for the proposition that the jury need not necessarily concur in a single view of the transaction, in order to reach a verdict (501 U.S. at 641, 111 S.Ct. 2491). There, a single crime was charged in the indictment, first degree murder, under then-existing Penal Code § 183. As the Court explained, "[i]f the conclusion may be justified upon either of two interpretations of the evidence, the verdict cannot be impeached by showing that a part of the jury proceeded upon one interpretation and part upon the other" (173 N.Y. at 127, 65 N.E. 989, quoting Murray v. New York Life Ins. Co., 96 N.Y. 614, 622 [1884]).

Defendant nevertheless contends that he could have been guilty of only one of the two theories-

811 N.E.2d 1053 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 Page 18

shooting or commanding-and therefore a different result should obtain. Indeed, he argues that the prosecutor must prove to the jury's satisfaction precisely what occurred as a matter of historical fact. This is so, he claims, for any issue that is critical to the main dispute in the case.

(Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

[7] As we sift carefully through the evidence, it becomes apparent that defendant makes much of what is essentially a preliminary fact. "Plainly there is no general requirement that the jury reach agreement on the preliminary factual issues which underlie the verdict" (Schad, 501 U.S. at 632, 111 S.Ct. 2491, quoting McKoy v. North Carolina, 494 U.S. 433, 449, 110 S.Ct. 1227, 108 L.Ed.2d 369 [1990] [Blackmun, J., concurring]). Defendant certainly kidnapped the victim-that is undisputed. He took on the mental state required: it was his decision to execute Matos. Thus, whether he personally pointed the gun at the victim's head and pulled the trigger, or whether, handing the eun to Monica, he gave her an order and stood near as she carried it out, the two choices for the jury were not so different that they amounted to any more than alternatives to a common end. Indeed, Justice Souter wrote that in analogous circumstances, "[w]e have never suggested that in returning general verdicts ... the jurors should be required to agree upon a single means of commission, any more than the indictments were required to specify one alone" (501 U.S. at 631, 111 S.Ct. 2491).

We have, more recently, had occasion to employ this principle in similar circumstances. For example, in People v. Rivera, 84 N.Y.2d 766, 622 N.Y.S.2d 671, 646 N.E.2d 1098 [1995], the defendant was indicted for second degree murder as a principal..***414 **1068 Concluding there was no bar to the People's assertion at trial that defendant acted as an accomplice, we held that the elements of the crime were the same, *409 whether the defendant acted in either role (id. at 771, 622 N.Y.S.2d 671, 646 N.E.2d 1098). The facts showed that the victim was shot once and died from the wound. Witnesses saw defendant and two cohorts,

all of whom had guns drawn, near the victim. The victim looked at defendant and said, "[y]ou shot me" before falling down (id. at 768, 622 N.Y.S.2d 671, 646 N.B.2d 1098). Thus, the People were entitled to prove that defendant intended the victim's death, and caused the death either by shooting his gun or by aiding the shooter. To convict, the People had to prove each element of the crime, and defendant's liability was the same whether he acted as either a principal or an accessory (id. at 770-771, 622 N.Y.S.2d 671, 646 N.E.2d 1098).

Similarly, in People v. Russell, 91 N.Y.2d 280, 288-290, 670 N.Y.S.2d 166, 693 N.E.2d 193 [1998], we concluded that the prosecution was not required to prove which of the defendants fired the lone bullet that killed the victim, when the evidence established that each defendant, embroided in a gun battle with the others, intentionally aided one another in a mutual combat that caused the death of an innocent bystander. Here, too, the prosecution need not have shown which of the two perpetrators actually fired the fatal shot.

FN14. In light of this conclusion, we also reject defendant's contention that the jury verdict was unreliable in that it did not enable him to know which theory to mitigate at sentencing.

- C. The Weight of the Evidence of First Degree Felony Murder
- [8] Defendant claims that his conviction for first degree felony murder based on either the shooter or the commander theory was against the weight of the evidence because the evidence proved, at most, that he was an ordinary accomplice and was guilty of second degree intentional murder (see Penal Law § 125.25[1]; § 20.00).
- [9] The standard of appellate review of the legal sufficiency of the evidence in a criminal trial, of course, is "whether there is any valid line of reasoning and permissible inferences which could lead a rational person to the conclusion reached by the jury on the basis of the evidence at trial" (Cahill, 2

N.Y.3d at 57, 777 N.Y.S.2d 332, 809 N.E.2d 561, quoting People v. Bleakley, 69 N.Y.2d 490, 495, 515 N.Y.S.2d 761, 508 N.E.2d 672 [1987]). Viewing the evidence in a light most favorable to the People, as we must (People v. Cabey, 85 N.Y.2d 417, 420, 626 N.Y.S.2d 20, 649 N.E.2d 1164 [1995]), we conclude that there is certainly a valid line of reasoning by which a rational *410 person could have reached the conclusion of the jury and that defendant's guilt was established beyond a reasonable doubt.

FN15. Contrary to defendant's assertions, the reasonable doubt charge here conveyed the proper standard.

[10] In this capital case, in which a death sentence has been imposed, moreover, we are constitutionally required to review the facts (N.Y. Const., art. VI, §§ 3, 5; *People v. Davis*, 43 N.Y.2d 17, 36, 400 N.Y.S.2d 735, 371 N.E.2d 456 [1977]). Our inquiry here is distinct from our traditional appellate review for legal sufficiency.

[11][12][13][14][15] We recently reiterated that "weight of the evidence review recognizes that '[e]ven if all the elements and necessary findings are supported by some credible evidence, the court must examine the ***415 **1069 evidence further' " (Cahill, 2 N.Y.3d at 57, 777 N.Y.S.2d 332, 809 N.E.2d 561, quoting Bleakley, 69 N.Y.2d at 495, 515 N.Y.S.2d 761, 508 N.E.2d 672). Thus, "[i]f based on all the credible evidence a different finding would not have been unreasonable, then the appellate court must, like the trier of fact below, weigh the relative probative force of conflicting testimony and the relative strength of conflicting inferences that may be drawn from the testimony. If it appears that the trier of fact has failed to give the evidence the weight it should be accorded, then the appellate court may set aside the verdict" (69 N.Y.2d at 495, 515 N.Y.S.2d 761, 508 N.E.2d 672 [internal citations omitted], quoting People ex rel. MacCracken v. Miller, 291 N.Y. 55, 62, 50 N.E.2d 542 [1943]; Cahill, 2 N.Y.3d at 58, 777 N.Y.S.2d 332, 809 N.E.2d 561), Of course, "[g]reat deference

is accorded to the fact-finder's opportunity to view the witnesses, hear the testimony and observe demeanor" (69 N.Y.2d at 495, 515 N.Y.S.2d 761, 508 N.E.2d 672). When "an appellate court performs weight of the evidence review, it sits, in effect, as a 'thirteenth juror' " (Cahill, 2 N.Y.3d at 58, 777 N.Y.S.2d 332, 809 N.B.2d 561, quoting Tibbs v. Florida, 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Bd.2d 652 [1982]). We must be sure that "the evidence is of such weight and credibility as to convince us that the jury was justified in finding the defendant guilty beyond a reasonable doubt" (Cahill, 2 N.Y.3d at 58, 777 N.Y.S.2d 332, 809 N.B.2d 561, quoting People v. Crum, 272 N.Y. 348, 350, 6 N.E.2d 51 [1936]).

With these standards in mind, we conclude that the evidence amply supports the first degree murder conviction. There is no question that defendant engineered and carried out the armed kidnapping of Matos, that defendant decided to kill him, hand-cuffed him, led him down to the basement, and that Matos died of an intentional gunshot wound to the head. No matter which version of defendant's story the jury credited, it was justified in finding that defendant was squarely in charge of the kidnapping and shooting of Matos.

*411 (i.) The Command Theory

Despite defendant's argument that there was no direct evidence that he told Monica to kill Matos, the circumstantial evidence strongly supports the conclusion that he did. On the day of Matos' murder, defendant was again looking for Janette, with Monica and Victor under his sway. Defendant ordered Monica to turn the car around to confront Matos, he directed her to stop the car and he forced Matos into the car at gunpoint. It was defendant who took Matos into the bathroom and handcuffed him. By then, defendant had made a decision to take "the kid" down to the basement to execute him. Defendant told police that he made this decision and Monica and Victor were following his orders.

Defendant told Sheridan, "I had already made

up my mind that I was going to kill him." Defendant stated that he gave Monica the gun, and stood not far from her as she pulled the trigger. Observing that Matos was still alive, defendant placed a plastic bag over his head, further demonstrating his intent. FN16 The only reasonable ***416 **1070 inference from these facts is that by word or ded, when he handed Monica the gun, he authoritatively directed her to pull the trigger (see Couser. 94 N.Y.2d at 637, 709 N.Y.S.2d 155, 730 N.E.2d 953).

FN16, After the jury sent a note asking for the medical examiner's testimony on the cause of death, defendant asked the court to "instruct the jury that the indictment has charged [defendant] with causing the death by shooting or commanding another to shoot the victim with a gun and that is the only cause of death that has been alleged." On appeal, defendant contends that the court was required to instruct the jury not to consider a suffocation theory of murder. This claim is not preserved, and in any event, without merit. The evidence in the case did not support the suffocation theory, nor was it charged or argued by the prosecutor. The court's main charge referred to-"shoot" or "shooting" no less than nine

After the shooting, defendant remained in charge. He explained to Sheridan that he set the alarm for 2:30 A.M. so that, after "partying," they could get up and get rid of the body. He ordered Moniea and Victor to go downstairs and wrap the body, FN17 he told Victor to help them lift the body into the car, he made Victor sit in the back of the car with the corpse (because there was no room in the front seat) and he instructed Moniea to drive to an alley near his old job to dispose of the body. When confronted by police with the theory that Monica was the shooter, defendant claimed surprise that Monica shot Matos in *412 the head. Sheridan later explained that defendant never said he was surprised that Matos was killed. It was reasonable

to infer that defendant was surprised that Monica, whom he scomed, carried out the order. He acknowledged in his written statement that everything she did was "out of fear of me and what I would do."

FN17. In his statements to police, defendant described the materials used to wrap the body, including curtains and a green blanket. Investigators corroborated these details when the body was found.

Throughout, defendant maintained his power over the other participants. The jury could easily have inferred that he gave an order to Monica to shoot Matos. The jury gave the evidence its proper weight and we will not disturb that determination.

(ii.) The Shooter Theory

Defendant's written statement to police provided the jury with solid evidence to conclude that he pulled the trigger:

"I handcuffed him behind his back and put him into the bathroom. Me and Monica were trying to figure out what we were going to do with him. I walked him down into the basement. I had already made up my mind that I was going to kill him. In the basement I put a dark handkerchief over his eyes. I shot the dude in the left side of his head as he stood there. The dude fell on the floor. The dude wasn't dead so I put a plastic garbage bag over his head. He was alive for about 2 1/2 hours. The dude just laid there on the floor making sucking noises. After awhile I checked on him and saw that he was dead."

This was a forceful admission leading to the conclusion that defendant shot Matos. True, defendant appeared confused when police asked him about the blindfold over Matos' eyes. Defendant said there was "nothing over the kid's eyes." Of course, defendant admitted covering Matos' head with a plastic bag after the shooting, and never retracted that portion of his statement, so he must have seen the blindfold, which was shot through

811 N.E.2d 1053 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399) Page 21

and bloodied. The jury may have inferred that he had forgotten about it by the time police asked about it

We conclude the jury was justified in finding beyond a reasonable doubt that defendant, having decided to execute the victim, directed Monica to shoot Matos or shot the victim himself, and in rejecting his claim that he was merely guilty of second degree murder as an accomplice.

1V

Defendant maintains that his confession was involuntary and that the introduction, ***417 **1071 during re-cross-examination of a prosecution*413 witness, of part of it-statements about three other murders-was reversible error. We hold that the confession was voluntary and that, through his trial strategy, defendant opened the door to admission of his statements on other homicides.

A. The Voluntariness of the Confession

[16] Defendant was arrested on the afternoon of November 6, 1996 based on leads Monica gave to police. FN18 He contends that his will was overborne by the investigators who questioned him, because they allegedly led him to believe that he was receiving a compelling benefit-lenient treatment for family members-in exchange for his confession. This claim is without merit.

FN18. We reject defendant's claim that information provided by an informant in a search warrant application was unreliable.

Following a *Huntley* hearing, the court determined that:

"[D]efendant was properly advised of his Miranda warnings and made a knowing, voluntary and intelligent waiver of those warnings before speaking with the officers. During the ensuing hours of interviews, the defendant made numerous inculpatory, spontaneous, oral and written statements to the police concerning the events under investigation. There is no evidence that the police in any way coerced statements made by the defendant, nor induced them by any threats or promises, implied or otherwise, concerning either the charges in this case against the defendant or charges, real or imagined, against his family. The People met their burden in establishing the voluntariness of the statements of the defendant."

An extrajudicial confession is inadmissible against an accused if it is involuntarily made (CPL 60.45[1]; People v. Anderson, 42 N.Y.2d 35, 37, 396 N.Y.S.2d 625, 364 N.E.2d 1318 [1977]). A confession is "involuntarily made" when it is obtained by a public servant engaged in law enforcement activity by means of any promise or statement of fact which creates a substantial risk that the defendant might falsely incriminate himself (CPL 60.45[2][b][i]).

[17][18][19][20] To determine voluntariness, courts review all of the surrounding circumstances to see whether the defendant's will has been overborne (Anderson, 42 N.Y.2d at 38, 396 N.Y.S.2d 625, 364 N.B.2d 1318; Arizona v. Fulminante, 499 U.S. 279, 285-286, 111 S.Ct. 1246, 113 L.Ed.2d 302 [1991]). Of course, "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the *414 Fourteenth Amendment" (Colorado v. Connelly, 479 U.S. 157, 167, 107 S.Ct. 515, 93 L.Bd.2d 473 [1986]). In our analysis, the hearing court's factual determinations, resting largely upon its assessment of the credibility of the testifying officers, are entitled to deference (see People v. Prochilo, 41 N.Y.2d 759, 761, 395 N.Y.S.2d 635, 363 N.E.2d 1380 [1977]). In a capital case, moreover, our obligation to weigh the evidence and determine whether the jury was justified in its conclusion beyond a reasonable doubt "extends to the hearing court's finding as to the voluntariness of the confessions" (People v. Carbonaro, 21 N.Y.2d 271, 274, 287 N.Y.S.2d 385, 234 N.E.2d 433 [1967]). These findings must be reviewed "by the same standards applicable to a verdiet of guilt" (id., quoting People v. Leonti, 18 N.Y.2d 384, 389, 275 N.Y.S.2d 825, 222 N.E.2d 591 [1966]).

***418 **1072 Defendant concedes that the hearing court made "no findings adverse" to him. Under our independent factual review power, we find ample evidentiary support for the hearing court's factual findings. A review of the circumstances here, moreover, shows that defendant's confession was voluntary, and that coercive police activity did not occur.

Defendant was placed in an interview room just after 5:00 P.M. and immediately began asking to speak to the District Attorney, saying he only wanted to "deal with the head man." He told another investigator, who was passing by in the hall, to send in the person handling his case while he still felt like talking. As soon as the homicide investigators entered the interview room at about 5:45 P.M. and introduced themselves, defendant announced that he had matters he wanted to clear up. Investigator Sheridan told defendant that first, he had to read him his rights. Defendant insisted he would tell them everything they wanted to know, but he wanted his family released. Investigator Sheridan gave defendant his Miranda warnings and defendant waived his rights.

Defendant immediately began talking. Before the investigator could put the Miranda card away, defendant stated that he would tell Investigator Sheridan what he wanted to hear, but repeated his demands. Sheridan explained, "I have to know what it is that you want to tell me" and defendant responded, "I wilt tell you about the homicides." When Sheridan asked for more information, defendant said, "I can tell you about Johvanny." Sheridan asked whether defendant killed Johvanny *415 (Diaz), FN19 and defendant admitted that he did, and again repeated that he wanted his family released. Defendant then admitted to killing "a black guy near a milk plant" (Peter Holley) and to killing Matos.

FN19. During the interrogation, defendant

admitted his involvement in the double homicide of Diaz and Joangel Toro.

Sheridan then told defendant that he would check on the status of his family members, but he at no time promised defendant that they would receive lenient treatment if defendant confessed. Indeed, defendant confessed to the murders without any prompting from the investigator other than requests for more information. As is obvious from the exchanges, defendant believed that he was in a position to influence the release of his family, acting under a self-created impulse to tell the police "everything" in order to achieve his own objective (see generally People v. Gonzales, 75 N.Y.2d 938, 940, 555 N.Y.S.2d 681, 554 N.E.2d 1269 [1990]).

Now, defendant claims that police led him to believe that they would limit the charges against his young brother, Victor, in exchange for his confession. By the point at which Victor's charges were discussed, however, defendant had already confessed to the four murders and to sole possession of the gun. The investigators did not promise that they would fulfill his desire; to the contrary, they informed defendant that his brother would not be released. Nor, despite defendant's claims, was there a true quid pro quo involving the dropping of gun charges against defendant's mother and other relatives. Once defendant acknowledged that the gun was his, police released those relatives and informed defendant that they had been set free. This information did not render involuntary defendant's subsequent elaboration about the murders.

[21][22] Defendant also maintains that the investigators should have been required to tell him that his family's fate ***419 **1073 was unrelated to whether he confessed, claiming they actively exploited his apprehension about his relatives. Yet the investigators were not required to dissuade defendant from making incriminating statements, or disabuse him of his fantasy that he could control the circumstances of the interrogation and win the release of his family. We find the reasoning of the Appellate Division in *People v. Johnson* persuasive: "[i]i

811 N.E.2d 1053 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

is not an improper tactic for police to capitalize on a defendant's sense of shame or refuctance to involve his family in a pending investigation absent circumstances which create a substantial risk that a defendant might *416 falsely incriminate himself" (177 A.D.2d 791, 792, 576 N.Y.S.2d 407 [3d Dept. 1991] [internal citation omitted]).

A comparison with the circumstances underlying our decision in Anderson, 42 N.Y.2d 35, 396 N.Y.S.2d 625, 364 N.E.2d 1318 [1977] is instructive. In Anderson, defendant was held for more than 19 hours without probable cause. He was deprived of food and sleep for over 30 hours, questioned by eight or nine officers operating in teams, isolated from friends and family during the entire period, and was not told of his right to counsel until the interrogation had been underway for more than 13 hours (42 N.Y.2d at 39-41, 396 N.Y.S.2d 625, 364 N.E.2d 1318). By contrast, in this case, police had ample cause to arrest defendant for the attack on McWilliams. Once in custody, defendant was given his Miranda warnings and waived them. Police offered defendant a cheeseburger, candy, water, coffee and cigarettes, as well as medical treatment. He insisted that he wanted to clear up the crimes, not go to a hospital. Defendant was questioned by two investigators. He was allowed two meetings with Victor and a meeting with Monica. He also was permitted a phone call to his mother, to verify that she had returned home. On this record, there is no evidence that defendant's will was overborne or his capacity for self-determination impaired, and every indication that he spontaneously, aggressively and voluntarily confessed to suit his own purposes.

FN20. At trial, the People must prove the voluntariness of a confession beyond a reasonable doubt (*Anderson*, 42 N.Y.2d at 38-39, 396 N.Y.S.2d 625, 364 N.E.2d 1318) when that issue is properly raised by the defense. For voluntariness to be submitted to the jury, there must be a proper objection and an offer of evidence suffi-

cient to raise a factual dispute (People v. Cefaro, 23 N.Y.2d 283, 286-287, 296 N.Y.S.2d 345, 244 N.E.2d 42 [1968]). Defendant submitted a written request to charge involuntariness conditioned upon his own introduction of evidence showing involuntariness. He subsequently withdrew his request on the record, as a matter of strategy, and never renewed it at the charge conference. Thus, he failed to place the voluntariness question before the jury (id. at 288-289, 296 N.Y.S.2d 345, 244 N.E.2d 42).

B. The Admission of the Statements about Other Homicides

Defendant claims on appeal that he was deprived of a fair trial through the admission, following re-cross-examination of Sheridan, of his statements regarding other homicides. FN21 In their direct case, the People initially introduced defendant's statements pertaining only to the Matos killing and the Avenue D incidents. The trial court ultimately permitted the People to introduce defendant's entire confession, including the statements about other homicides, to rebut the claim that defendant *417 falsely confessed in an unreliable interrogation to killing Matos to cover for his wife. The trial court explained that the jury needed to hear the entire confession to discern "the truthfulness of the [Matos] ***420 **1074 statement and the motivation for the defendant to give the various versions" of it. In our view, defendant, in the particular circumstances of this case, opened the door to this

> FN21. Defendant couched his objection to the trial court solely in terms of an evidentiary error.

> FN22. Defendant's other claims of evidentiary error, pertaining to the admission of the Avenue D incidents and his abuse of Janette Sanchez, and the exclusion of a taped telephone call to his mother, are also without merit.

811 N.E.2d 1053 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

Page 24

(i.) Pretrial Motion Practice

On July 31, 1998, more than three months before trial, the prosecution informed defense counsel by letter that it did not intend to offer testimony in its direct case regarding other murders "unless the door is opened through argument, cross-examination or presentation of evidence by the defendant." The People warned that if defendant raised voluntariness claims "which in any way relate to what took place during the times the defendant was making statements regarding the Diaz, Toro or Holl[e]y murders," they would seek to present rebuttal evidence concerning the interrogation as a whole.

In an August 10, 1998 letter in reply, defense counsel acknowledged:

"We recognize that reduction of evidence of the prior homicides necessarily creates gaps in the time-line of the interrogation... Please be assured that we will not exploit these gaps by arguing to the jury that these gaps reflect the time when impermissible pressure was brought to bear upon [defendant]."

On August 31, 1998, defendant moved for a pretrial order redacting from his confession any reference to the other homicides. The People responded that for the first hour and three quarters of the interrogation, defendant spoke about four murders intertwined with his repeated request that police release his family. The People offered to structure their direct examination to eliminate all conversations regarding "the four bodies and the defendant's demands to have his family released." The prosecution again warned defendant against opening the door to his admissions through, for example, questions about time gaps in the confession or alleged promises made by police about his family's release. The prosecution maintained that it would be unfair to require the investigators to answer *418 questions about any alleged promises without being able to explain to the jury "the entire substance of that conversation."

After extensive oral argument, the court told defense counsel that many issues in the case could open the door to the full confession. To avoid that outcome, the trial court offered defense counsel the opportunity to submit a "wish list" of suggested redactions from the confession. The court additionally invited defense counsel to submit proposed questions for cross-examination, so that the court could, in advance, point out areas that might be in the danger zone. Plainly attentive to the potential for prejudice to defendant, the court stressed that the other statements could be relevant to issues in the case, requiring examination of the "prejudicial or probative value of the statements themselves."

Despite the trial judge's suggestion, defendant chose not to provide a list of proposed redactions. Thus, without benefit of a proposal from defense counsel, the court issued its pretrial order:

"The People ... point out that during the time period that Inv. Sheridan and Sgt. Gropp spoke to the defendant, there was intertwined conversation regarding other issues dealing with the release of his family.... The prosecution, however, is concerned that the period***421 **1075 of time taken up regarding the conversations on the Diaz, Toro and Holley nurders may be raised by the defense on the issue of voluntariness on the Matos-Rodrifgluez murder, which is the subject of this trial. The People wish to reserve the right to question the investigators on re-direct examination should the defense 'open the door' to an enlarged area of questioning.

"The Court is sensitive to the People's request but feels there is no way to make a definitive order in advance of the trial on the People's request. Therefore, it is the direction of the Court that the People should structure their direct examination regarding the conversations between the defendant and the police from 5:45 p.m. to 7:30 p.m. on November 7, 1996 [sic] in a way in which all conversations regarding references to '4 bodies' and the defendant's demand to have his family released are eliminated. The Court will allow lee-

2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as; 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

way to the prosecution*419 by way of leading questions on these issues. The Court will preserve the People's right to challenge the defense cross-examination and to raise the issue as to whether the defendant has raised any issue as to the voluntariness of the statement relating to what took place during the times the defendant was making statements regarding the Diaz, Toro, and Holley murders." FN23

FN23. In his dissent, Judge G.B. Smith acknowledges the trial court's conclusion that "evidence of the other murder confessions was relevant to address issues raised about the voluntariness and the truthfulness of defendant's statements, especially as they related to promises made by the police and their negotiations with the defendant" (Smith dissent at 437, 779 N.Y.S.2d at 434, 811 N.E.2d at 1088). While Judge Smith disagrees with that conclusion, the trial court manifestly had a reason for drawing it other than to "demonstrate that the defendant was predisposed to commit the crime charged" (Smith dissent at 437, 779 N.Y.S.2d at 434, 811 N.E.2d at 1088).

(ii.) The Defense Strategy

Despite knowledge that the People were prohibited from eliciting the chronology of the confession or defendant's demands to have his family released, and despite the trial court's repeated warning that the preclusion order would be revisited based on what ensued at trial, the defense opened with its own theory explaining the Matos statement: that defendant was motivated to confess in an "obvious and elaborate ritual to cover for his wife." In the opening, defense counsel told the jury that defendant's statement "was nothing less than Mr. Mateo taking everything his wife did onto his shoulders." Disregarding his own earlier assurance that he would not exploit the time gaps, counsel also urged the jurors to "pay close attention to the circumstances and chronology of the statements."

Through the cross-examination of police witnesses, defendant's strategy emerged. Questions about the extent of his leg injury, the timing of events in the interrogation and his concern for his family (which the People had been barred from explaining) began painting a picture that defendant, in significant pain throughout a very protracted night-time interrogation, confessed to Matos' murder in an unreliable manner. By contrast Sheridan, the People's main witness on the Matos murder, testified in the truncated fashion directed by the pretrial order.

Sheridan testified that defendant first admitted to shooting Matos himself, then changed his story and claimed Monica did it, then went back and forth several times, and even claimed that Monica did it, but he would take the blame because he was a "king" and wanted the death penalty. After***422 **1076 these various oral *420 admissions, defendant again asserted in his written statement that he pulled the trigger. By contrast, he never wavered from his assertions that he decided to execute Matos and that Monica was following his orders.

Sheridan also explained that after he completed taking the Matos statements, his partner Sergeant Gropp took defendant's written statements about Avenue D. When the People finished their direct examination of Sheridan, the defense sought rulings from the trial court about eight areas of crossexamination of the investigator concerning: 1) the time gaps in the interrogation, 2) alleged promises that defendant's family would be released, 3) alleged promises that police would reduce Victor's charges, 4) alleged promises about Monica's charges, 5) defendant's concern for his family's safety, 6) the substance of what defendant learned about Monica's statements, 7) the substance of defendant's taped telephone call to his mother (in which he said he "took four bodies"), and 8) defendant's physical condition during the interroga-

The trial court advised defense counsel that, in light of this plan of attack:

"I think that the redactions that have been agreed to up to this point by the People on the direct would not continue through the cross-examination. If I'm going to be telling the jury that in evaluating the testimony of Investigator Sheridan concerning the statement attributed to the defendant, one of the things I'd be telling them is they should be looking at the totality of the circumstances, everything that happened. And in this case, ... the picture is a picture of a defendant who is attempting to take control of the interview process and asserting very vigorously conditions that he requires as conditions precedent to his talking to the officers from the moment of calling Investigator Sennett and telling him to get somebody in there to talk to him, setting conditions for his family's release, setting conditions for what charges would be placed against his family, specifically Victor Cordero."

The court agreed to allow defense counsel to ask general questions about the time gaps and defendant's injury, but again warned that if counsel strayed into the areas of voluntariness and reliability, then the door would open to the entire confession. Defendant's demands for the release of his family, the *421 court determined, were ongoing negotiations and their unveiling would open the door to the People's rebuttal. Defense counsel could ask general questions about Victor's role at Avenue D, but any questions about negotiations about either Victor's or Monica's charges would open the door to rebuttal. Indeed, the court reminded defense counsel that Monica had told investigators that defendant was responsible for "several other bodies."

Inquiry about defendant's meetings with Victor and Monica, the court concluded, would also require explaining defendant's motivation for making admissions, and the jury would then need to consider the full circumstances of the confession to evaluate voluntariness and reliability. The court again warned that if defense counsel was not careful, "the doors could fling open."

FN24. Defendant's telephone call to his

mother was not part of his confession, but occurred afterward. The trial court precluded cross-examination about it because of defendant's admission to "four bodies."

On cross-examination, defense counsel quickly returned to the themes of the time gans and defendant's injury, reiterating that the interview began at 5:45 P.M., that a meeting with Victor took place at 8:00 ***423 **1077 P.M., and a second meeting with him was "much, much later," and that defendant was limping. Cross-examination was then interrupted because defendant developed the flu. When the trial resumed, defense counsel asked for three more rulings. Specifically, counsel asked if he could cross-examine the investigator about: 1) defendant's meeting with Monica, 2) defendant's second meeting with Victor and 3) the phone call. The court repeated that the phone call was still off limits because of its reference to "four bodies," but determined that the defense could ask generally about the meeting with Monica, although not its substance. The defense withdrew the request to ask about the second meeting with Victor, because during that conversation, defendant told Victor that he would take the rap for "these murders." Yet immediately after those rulings, defense counsel asked Sheridan about the second meeting with Victor, and whether defendant had confided that "this stemmed from his personal relationship with Janette and Monica; is that correct? Was there anything of that nature discussed?" The investigator answered, "I don't believe so "

The defense also questioned Sheridan whether the written Matos statement was "typed out in a single session" or whether *422 there was a "break" before it was finished. Counsel persisted, asking, "But the narrative was done and then you asked him is there anything else you want to say? And then he added a final sentence or two?" The investigator responded, "Yes. That's it." Defense counsel additionally established that defendant added a second, handwritten addendum to that statement at approximately 2:00 a.m., more than eight

hours after the interrogation began. He further elicited that defendant expressed concern for his family members "throughout" the interrogation.

Defense counsel completed cross-examination and offered to withdraw his request for a voluntariness instruction after the People argued that any such request would "open up the questioning of Investigator Sheridan to the entire contents of the interview" on redirect. The court asked defense counsel for clarification, noting that it had:

"some concerns about the questions that have been asked up to this point about the physical condition of the defendant, because it's not asked presumably just to be out there. It's asked to perhaps give the impression to the jury that Mr. Mateo was under such a physical disability because of the wound to his leg that he spoke with the officers. And certainly the time of the interview is left hanging here. The time of the statement being signed. And all that that [sic] goes to it. I think we're asking the jury to speculate."

Defense counsel claimed that he had "assiduously avoided reference to physical condition in my cross-examination" of Sheridan. The court, however, pointed out that "[e] verybody that had a passing view of your client was asked if he was limping or scemed to be bothered by a wounded leg." Defense counsel then promised not to "get into the classic volunteriness issues."

As for a truthfulness charge, the court observed:

"This issue about truthfulness of the statement, reliability of the statement, any issue that could be phrased to the jury as asking them to, members of the jury, try to read between the lines about what's going on here, those are issues that I'm very concerned about, and I guess I want to alert all of you to that. If the defense is really withdrawing this *423 and that these issues are not going to be asked of Investigator Sheridan or any ***424 **1078 other officer, then I would

expect they not be referenced either. Is that clear to everybody?

"[THE PEOPLE]: Yes, Your Honor.

"[DEFENSE COUNSEL]: Yes, Your Honor."

On redirect, the prosecutor posed a few questions about defendant ordering Monica and Victor to follow his commands, and about the decision to kill Matos. On re-cross, defense counsel asked about defendant's assertion that he was "going to take the []rap for this or take the blame for this." Counsel asked whether Sheridan "pressed him on the matter" and finally, asked whether defendant stated it was "because he wanted [the] death penalty." The prosecutor objected on the ground that the questions were beyond the scope of the redirect.

The court asked counsel to approach, and after a 15-minute recess in which it reviewed Sheridan's report on the interrogation, observed:

"I think all of this goes to truthfulness of the statement and negotiations on the statement. If you are going to be arguing that to the jury, on the issue of whether the statement itself is truthful and the motivation for changes, this is what it's about it seems to me. It is so interwoven, at least the setting of this police report, the way that it's couched in this police report, it starts out from the moment the rights are read that Mr. Mateo is setting the agenda for how the statement is going to be taken, under what conditions, and even what subjects are going to be covered. I can understand, based on what your defense is-and I guess this is one of the things that we all talked about at various stages in the case-that we wouldn't know until we were here completely what tenor the case would take. I understand also why you haven't, up to this point, up to the requests for the charge, really indicated what it was that you were going to be saying at the trial, but now we are here and if there is an issue about the truthfulness of the statement and the motivation for the defendant to give the various versions that have been described by the witness, then I think it all comes in, the entire testimony about the other homicides, the contacts with the family, the belief *424 that others may have been informing on him, I think that all comes in. To say that it doesn't, I think, again, asks the jury to determine the truthfulness of the statement without knowing what all the circumstances surrounding the taking of the statement were."

The court concluded that defendant's motivation for making the written statement "involved other criminal acts that he faced" and was interwoven with his desire to see that members of his family were released from police custody.

Aware of the potential prejudice to defendant, the court acknowledged that it would:

FN25. At that point in the proceedings, defendant's betated offer to withdraw his request for a truthfulness charge on the question of defendant's motives for confessing, after sharply focusing on that question, was an empty one, as the People argued and the trial court concluded.

"inform the jury that the information concerning other homicides is not offered as an indication that the defendant committed this homicide for which he is charged or any of the crimes for which he is charged, but it's offered on the issue of the truthfulness of the statement and what motivation, if any, Mr. Mateo may have had to alter his description of the events."

Sheridan then testified concerning defendant's full confession, followed by an ***425 **1079 instruction warning the jury that the testimony was admitted for "a very limited purpose." The trial judge explained that the statements about other homicides were not to be considered as any indication of defendant's propensity for committing crimes. Rather, the court charged, the jury should consider the probability or improbability of the Matos statements and what motivation, if any, defendant had to make them, and should reflect on the in-

terrogation as a whole to assess the truthfulness of the Matos statements. In its final charge, the court repeated these instructions to the jury.

(iii.) Analysis

[23][24][25][26][27] It is well settled that evidence is relevant if it has any "tendency in reason to prove any material fact" (People v. Alvino, 71 N.Y.2d 233, 241, 525 N.Y.S.2d 7, 519 N.E.2d 808 [1987]). All relevant evidence is, moreover, admissible at trial unless barred by some exclusionary rule. Even where relevant evidence is admissible, it may still be excluded in the exercise of the trial court's discretion if its *425 probative value is substantially outweighed by the potential for prejudice (People v. Scarola, 71 N.Y.2d 769, 777, 530 N.Y.S.2d 83, 525 N.E.2d 728 [1988]). When a party "opens the door" during cross-examination to excluded evidence, the opponent may seek to admit the excluded evidence in order to explain, clarify and fully elicit the question that has been only partially exposed on cross-examination (see e.g. People v. Rojas, 97 N.Y.2d 32, 735 N.Y.S.2d 470, 760 N.E.2d 1265 [2001]; People v. Regina, 19 N.Y.2d 65, 78, 277 N.Y.S.2d 683, 224 N.E.2d 108 [1966]). FN26 "The 'opening the door' theory must necessarily be approached on a case-by-case basis" (People v. Melendez, 55 N.Y.2d 445, 452, 449 N.Y.S.2d 946, 434 N.E.2d 1324 [1982]).

> FN26. While the Smith dissent rests ontirely on People v. Molineux, 168 N.Y. 264, 61 N.E. 286 [1901], that was never the argument of the defense at trial, or its objection to admission of the statements. or the basis for the trial court's ruling, Indeed, defendant's mistrial motion, made several days after the statements were received in evidence, recognized that the ruling was based solely on the defense having opened the door. We note, moreover, that the evidentiary rule concerning "door-opening" is at least as venerable as the rule excluding prior bad acts (see e.g. People v. Buchanan, 145 N.Y. 1, 23-24, 39

N.E. 846 [1895] [acknowledging defendant opened the door, in first degree murder prosecution, to hearsay conversation between witness and coroner to rebut suggested inference concerning the motives of the testifying witness]).

Nor is defendant's current contention that the trial court dropped a "surprise, mid-trial decision" on defense counsel supported by the record. From day one, counsel was repeatedly warned that overstepping the preclusion order could open the door to defendant's full confession.

[28] There is no doubt that this interrogation, as a whole, was probative of a material issue in the case-defendant's motive for confessing to the Matos murder-and could aid the jury in assessing the truthfulness of that portion of defendant's confession. There is also no doubt that it was defendant himself who made his motive for confessing an issue in this case. Eschewing the court's offer before trial commenced to make selective redactions from the statements, and to pre-approve areas for cross-examination, the defense knowingly embarked on a dangerous strategy that during trial was periodically revisited by the court and the parties, and ultimately went too far.

The defense, in its opening statement, argued that the jury should acquit defendant of first degree murder because he confessed, in a lie, to cover for his wife. Four areas of testimony then became troubling***426 **1080 to the trial judge. First, after Sheridan's direct testimony, the jury knew simply that defendant confessed to the killing of Matos. What was omitted were defendant's stage-setting declarations that he would give the police "everything" in exchange for what he wanted. Second, the jury was left with the impression that defendant was interrogated *426 from 5:45 P.M. to 2:00 A.M. concerning one murder and the Avenue D incidents. During that time, he actually spoke at length about four murders as well as two brutal

home invasions at Avenue D, intertwined with demands for the release of his family.

Third, as the trial court emphasized, the jury heard repeatedly that defendant had a bandaged leg wound and was limping. What was beyond the jury's knowledge was the fact that, despite his injury, defendant refused offers of medical treatment because he insisted on first clearing up the four homicides. FN27 Finally, having learned in the opening that defendant was motivated to confess in an "obvious and elaborate ritual to cover for his wife," the jury heard that defendant and Monica were involved in one murder. It did not know that defendant also confessed to three murders having nothing to do with Monica. Nor did it know that Sheridan told defendant early on that Monica was facing serious charges and defendant did not care that she "had been caught" and would not be released.

FN27. True, Sheridan had testified on the People's direct case that defendant's leg was wounded and he was offered medical treatment but refused. The trial court ordered limited cross-examination about the injury.

"If the testimony and evidence of the physical condition of the defendant is argued to the jury as being relevant on the issue of voluntariness of the statement and reliability of the statement, then clearly evidence of the defendant's ability to assert himself, to control the circumstances or attempt to control the circumstances under which the statements were made, to control the circumstances under which the interrogation took place. setting the conditions for that interrogation, for verification of those conditions that had been agreed upon, all those go to his state of mind, his ability to think, perceive, react, and as such all bear on the issue of reliability and voluntariness."

We disagree that, in these circumstances, we are creating a new rule that "the People can circumvent an order excluding evidence of prior bad acts by introducing evidence that, if introduced by the defendant would open the door to those prior bad acts" (Smith dissent at 445). Rather, the defense was explicitly told that it could ask general questions about the injury but if it went further, creating the impression that the injury rendered the confession unreliable, it did so upon peril of opening the door to proof of what actually happened during the interrogation. As the trial court concluded, defense counsel's repeated emphasis on the injury, as part of the false picture before the jury, crossed the line that had been drawn.

Compounding the problem of the distorted picture before the jury was the defense tactic of claiming it had no intention of opening the door, then persistently nudging it ajar. Incrementally, it became apparent to the trial court that, for the jury to assess defendant's claim that his admission to the murder of Matos was a lie, it had to view that statement in its extraordinary*427 context. The final, withdrawn defense question-whether defendant claimed that he confessed because he wanted the death penalty-underscored for the court and highlighted for the jury the enigma of defendant's motivation for confessing to the Matos murder: was it to cover for Monica, to get the death penalty, or something else? FN28

FN28. Judge Smith maintains that "[t]he jury was not being called upon to decide what would motivate defendant to offer any confession at all. The defense was trying to persuade the jury only that the oral confession rather than the written one was the true account of the killing" (Smith dissent at 450). Yet in claiming the written statement a lie, defendant explained it

away in another lie-that he confessed to cover for Monica. The jury was thus called upon by defendant to examine why he confessed and the People were permitted to answer that question with proof that he admitted not one but four murders, not for Monica, but to achieve the release of his family

***427 **1081 As the court well knew, but the jury did not, the People had been precluded from presenting defendant's actual motivation for confessing-his belief that he could set the terms of his interrogation, claim responsibility for four murders and win his family's release. The defense cannot, on one hand, claim that defendant is innocent of first degree murder and lied to cover for his wife, and on the other, abuse the preclusion order and bar the People from refuting that claim. In effect, "the defense converted the shield of the preclusion order into a sword by arguing that the People should not be allowed to supply" defendant's true motive for confessing (Rojas, 97 N.Y.2d at 39, 735 N.Y.S.2d 470, 760 N.E.2d 1265). In these unusual circumstances, the jury was entitled to decide whether the defense claims rang true in context.

At bottom, the Court divides over what amounts to a fundamental disagreement about the trial record in this case. For an appellate court, the best evidence of who said what is in the transcript and we therefore have quoted extensively from it in an effort to show how the issue regarding defendant's statements developed during trial-the pivotal inquiry. One prominent example of our difference is the claim that it was the People, and not the defense, who "opened the door" (Smith dissent at 440, 441, 779 N.Y.S.2d at 410-411, 413, 811 N.E.2d at 1064-1065, 1067). In fact, Sheridan testified on direct on November 16 and 17, 1998 (record at 14626-14702), and we are unable to find-until defendant's cross-examination-any testimony bringing out the fact that defendant confessed in an eight-hour interrogation, about the early morning hour when the interview ended, or about its chrono2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

logy.

The trial court, of course, observed this evolution of the issue firsthand before making its ultimate ruling that the potential *428 for prejudice to defendant did not substantially outweigh the probative value of the full confession. This ruling was made not sua sponte, or in a vacuum, but after repeated admonitions to defense counsel, several quoted verbatim in this writing. To diminish the potential for prejudice, moreover, the court instructed the jury concerning the limited purpose for which the clarifying evidence was being admitted. Unlike the Rosenblatt dissent, we will not disregard the trial court's "explicit emphasis twice, by cautionary instructions to the jury" that the full confession was introduced only so that the jury could consider the truthfulness of the Matos statement and defendant's motivation for making it, and not as proof of the charged crimes (see People v. Till, 87 N.Y.2d 835, 837, 637 N.Y.S.2d 681, 661 N.E.2d 153 [1995]).

Should the court have made a more circumscribed ruling, permitting introduction of the other statements in a redacted form to limit further the potential for prejudice? That surely seems a better option. Indeed, the court had given that option to the defense prior to trial, but the defense ignored it. At trial, when the court ruled the statements admissible, the defense never suggested-as both dissenters do today-that they be tailored so that Sheridan would merely testify that defendant had confessed to "other crimes." FN29 But ***428 **1082 even such a ruling might have left the jury to speculate about what "other crimes" would require an eight-hour confession, or be so compelling that they would motivate defendant to forgo medical treatment for a bullet wound.

FN29. Nor, surprisingly, did defense counsel say anything when the prosecutor elicited from Sheridan details corroborative of the other homicides.

[29] Of course, "[t]here is no litmus paper test for determining when the probative value of the

evidence outweighs its potential for prejudice" (
People v. Ventimiglia, 52 N.Y.2d 350, 359, 438
N.Y.S.2d 261, 420 N.E.2d 59 [1981]). FN30 In
Ventimiglia, we determined that "[i]mportant in the
weighing process will ... be how the evidence
comes into the case, *429 that is, whether at the instance of the People initially, or in rebuttal to a defense offered by defendant" (id. at 360, 438
N.Y.S.2d 261, 420 N.E.2d 59).

FN30. Ventimiglia did not involve dooropening, but an application of the rule against admitting prior crimes to show propensity. As these concepts are often related, the reasoning of Ventimiglia is instructive (see Rojas, 97 N.Y.2d at 38, 735 N.Y.S.2d 470, 760 N.E.2d 1265). In Ventimiglia, moreover, we concluded that "[w]here defendants charged with murder, kidnapping and conspiracy have stated as part of their planning that they have a place for disposing of the body 'where we put people ... and they haven't found them for weeks and months', the statement is admissible because its probative value as to premeditation of the murder and as to the plan of the conspiracy outweighs the prejudice resulting from the admission implicit in the statement that defendants have committed prior murders" (id. at 355-356, 438 N.Y.S.2d 261, 420 N.E.2d 59).

Viewing the question of prejudice in the context of the trial, this was a case in which the other statements came in as rebuttal to the defense theory. As the trial court observed, "[t]his isn't an identification case. This is a statements case" in which defendant's guilt of intentional second degree murder was uncontested. By the time these statements were received in evidence, the jury had already heard the details of the Matos execution from defendant's own words to Sheridan. Additionally, it heard uncontested evidence of defendant's crimes at Avenue D, through the testimony of the people who actually fended him off. And it heard

that he had confessed in a lie to protect Monica.

But the law had altered the landscape for the People by excluding probative evidence bearing on the truthfulness and reliability of defendant's admission to the Matos killing, and defendant sought to exploit that pretrial ruling. In the tangible circumstances presented, where the main issue for the jury was whether defendant was guilty of second degree murder as an accomplice, or of intentional first degree murder as the shooter or commander, we hold that the trial court acted within the bounds of discretion in its ultimate conclusion-resolving the issue explicitly identified at the outset of the trial-that the probative value of the full confession was not substantially outweighed by its potential for prejudice to defendant.

Finally, six of us conclude that, on this record, the admissions about other crimes were probative of a material issue in the case, and that the door was opened by the defense, to one degree or another. All seven of us remain deeply committed to the just, faithful and equal application of the law, irrespective of guilt. In so doing, we need not examine the trial court's ruling through the lens of what might have been one of several appropriate responses in the heat of trial. Rather, the result reached here rests on a succession of factors particular to this case, beginning with defendant's staging of his statements to the police and the favorable pretrial order he procured, and ending with the skewed ***429 **1083 picture that his abuse of that order produced-in short, turning the protective shield into a sword. That was impermissible before this case, as it continues to be after.

As we concluded in *Harris*, despite the success of defendant's *Jackson* challenge to his sentence (98 N.Y.2d at 496-497, 749 N.Y.S.2d 766, 779 N.E.2d 705), his conviction for first degree murder and the other offenses stands, *430 and we therefore affirm it. As a consequence, defendant's remaining contentions regarding his sentence are academic.

Accordingly, the judgment of County Court should be medified by setting aside the sentence of death and remitting to County Court for resentencing in accordance with CPL 470.30(5)(c) and Penal Law §§ 60.06 and 70.00(5) and, as so modified, affirmed; the appeal from County Court's order dated March 11, 1999 should be dismissed.

SMITH, J. (dissenting).

Defendant's confessions to the murders of Johvanny Diaz, Joangel Toro and Peter Holley were improperly admitted at trial. The evidence had no relevance to any material issue in the Matos case and tended only to demonstrate defendant's violent propensity. Nor did the defense open the door to the admission of those confessions. The evidence does not support the Court's conclusion on this issue. The record illustrates that the defense did not raise any issue warranting the introduction of the confessions related to the three uncharged murders. The evidence therefore should have been excluded pursuant to People v. Molineux, 168 N.Y. 264, 61 N.E. 286 [1901] and its progeny. I therefore dissent and vote to reverse defendant's conviction and remand for a new trial.

As an initial matter, as I have stated in other. capital cases this Court has heard since the reinstatement of the death penalty, because the penalty of death is qualitatively different than any other type of sentence a court may impose, both in its severity and its finality, there is a heightened need for reliability (see Woodson v. North Carolina, 428 U.S. 280, 305, 96 S.Ct. 2978, 49 L.Ed.2d 944 [1976] [plurality op.]; see also Caldwell v. Mississippi, 472 U.S. 320, 340, 105 S.Ct. 2633, 86 L.Ed.2d 231 [1985]; Beck v. Alabama, 447 U.S. 625, 638, 100 S.Ct. 2382, 65 L.Ed.2d 392 [1980]; People v. Harris, 98 N.Y.2d 452, 497-506, 749 N.Y.S.2d 766, 779 N.E.2d 705 [2002] [Smith, J., concurring in part and dissenting in part]; People v. Cahill, 2 N.Y.3d 14, 77, 809 N.E.2d 561 [2003] [Smith, J., concurring]). "Any error that increases the risk of an unwarranted conviction, which would bring the defendant a step closer to death, must be subject to the heightened reliability standard" (People v. Harris, 98 N.Y.2d at 503, 749 N.Y.S.2d 766, 779 N.E.2d 705 [Smith, J., concurring in part and dissenting in part]; State v. Martinez, 132 N.M. 32, 36, 43 P.3d 1042, 1046 [2002] ["Because of the gravity and irrevocability of the death sentence, and the grave injustice that would accompany an erroneous execution, error in a capital case is more likely to rise to fundamental error than the same error in a non-capital case. In a capital case, a legal defense often represents the only lawful mechanism by which a defendant may preserve his or her life. Any error that encumbers *431 that mechanism unfairly debilitates the defendant's claim to life, magnifies the risk of an erroneous execution, and necessarily constitutes a circumstance that shocks the conscience and implicates a fundamental unfairness within the system that would undermine judicial integrity if left unchecked" (citation and internal quotation marks omitted)]). Indeed, as this Court stated in Harris, "We ***430 **1084 are careful to note ... that capital trial courts should exercise great caution in making discretionary determinations The stakes are high for all involved" (People v. Harris, 98 N.Y.2d at 490, 749 N.Y.S.2d 766, 779 N.E.2d 705).

Responding to defendant's appellate argument challenging the constitutionality of the death penalty based on the risk that an innocent person may be executed, the People argue, "Sometimes, despite all the steps taken by the Legislature and the Judiciary to assure that such mistakes are few and far between, human and institutional fallibility may result in a wrongful conviction. And even if it has not happened in the last thirty years and certainly will not happen here, it is possible that an actually innocent person will be someday executed." Despite this observation, no judge or lawyer can accept the possibility of the conviction and execution of an innocent person. It is therefore imperative for the judiciary scrupulously to honor the defendant's constitutional right to a fair trial and to apply carefully the evidentiary rules established for the protection of the innocent. In this case, however, even without regard to heightened scrutiny standards, the admission of evidence that defendant had committed three murders in addition to the crimes for which he already stood accused was clearly erroneous.

It should be clear that the difference between the majority and the dissent is not simply a different reading of the record. One difference is that the People never claimed that the defendant had opened the door to testimony concerning defendant's confession to three unrelated murders and the trial court did not base its decision to allow that evidence on its conclusion that the defendant had opened the door, but the majority itself concludes that the defendant opened the door. The second difference is that the majority does not address the defendant's main argument for moving for a mistrial and one of his contentions on this appeal, namely that the introduction of the testimony concerning three unrelated murders violated People v. Molineux.

*432 A.

In addition to confessing to the two burglaries at the Avenue D apartment building and the murder of Juan Matos, defendant also told Detective Sheridan that he had killed Johvanny Diaz, Joangel Toro and Peter Holley. Describing the first two murders, defendant confessed that he and his cousin "Moncho" had been hired by a drug dealer named Charlie to shoot Johvanny Diaz in the knees and to steal his jewelry because Diaz owed Charlie money. Defendant and Moncho were to be paid \$10,000 for the shooting. They looked for Diaz and found him on Jay Street. After they unsuccessfully attempted to purchase drugs from Diaz, he walked across the street to use a pay telephone. Joangel Toro approached Diaz while he was on the phone and stood near him. Defendant and Moncho then put nylon masks over their faces and walked over to Diaz. Moncho pointed a .45 caliber gun at Diaz. When Toro tried to walk away, defendant pointed a .38 caliber gun at him and forced him to return. Moncho then shot Diaz in the face, which prompted defendant to start shooting at Toro. After shooting at both victims numerous times, defendant and Moncho fled the scene.

Defendant then recounted to Detective Sheridan the murder of Peter Holley. According to defendant, his cousin had come to him and said that a man threatened him with a knife and stole his bicycle and jewelry. Defendant obtained a single-barrel shotgun and drove through the streets with his cousin to find the man. When they approached the area of the robbery, ***431 **1085 his cousin saw his bicycle on the side of the road. His cousin identified and pointed out Holley as the man who robbed him, exited the car and retrieved his bicycle. Defendant then drove up to Holley, who was trying to get into his own parked car, shot him in the head and drove away.

B.

Prior to trial, the prosecutor informed defense counsel that the People would not seek to introduce defendant's confessions to the three uncharged killings unless the defense opened the door to the evidence. In particular, the prosecutor warned that he would seek the introduction of all of the defendant's confessions if the defense challenged the voluntariness of the statements or sought to prove that defendant's confessions were induced by promises made to him by the police. The prosecutor also noted that any attempts by the defense to exploit the gaps in the timing of the interrogation during which the admitted *433 confessions were obtained would open the door to the remainder of defendant's confessions. Defendant's attorney agreed to avoid those areas during his argument and in the course of the cross-examination of the People's witnesses. Counsel, however, maintained that challenges to the truthfulness of defendant's confessions regarding who actually shot Matos would not open the door to the additional murder confessions.

During his opening statement, defense counsel made no attempt to challenge the voluntariness of defendant's confessions. As is relevant here, defense counsel argued that at the core of the case lay two questions: "Who did what? And why did they

do it?" Counsel informed the jury that defendant "gave an oral and a written statement while interrogated by Investigator[s] Sheridan and Gropp." He urged the jury to "pay close attention to the circumstances and chronology of the statements." Counsel went on to argue that in his written statement, defendant attempted to take the blame for his wife's actions because he felt responsible for Matos's death. The prosecutor at no time suggested to the court that arguments made in defense counsel's opening statement opened the door to defendant's confessions concerning the three uncharged murders or that the disclosure of those confessions was warranted.

What the defendant indicated in the opening statement was that the defendant did not kill Matos and did not order his wife to do so. Thus his strategy, stated in the opening, was to blame Monica Szlekovics, his wife, for the murder and to prevent a conviction for first degree murder. He stated, "This killing, as tragic as it was, was at the unguided hands of Monica Szlekovics, a woman capable of acts of violence, especially when it involved a perceived threat with her relationship with Angel Matea."

Following the direct examination of Investigator Terrance Sheridan, the parties and the court discussed the areas which defense counsel intended to explore on cross-examination and the arguments he intended to advance based on the testimony. The court informed defense counsel that a challenge to the voluntariness of defendant's confessions based on any alleged promises, as well as a challenge to the reliability of his confessions based on the fact that he had an injured leg at the time of the interrogation or due to some other exerted influence, would open the door to the evidence that he had confessed to the three uncharged murders. Based on the court's ruling, counsel withdrew his previous request that the court give the jury an *434 instruction on the voluntariness ***432 **1086 or the reliability of defendant's statements.

FN1. It is important to note that regardless

2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

of what rulings defense counsel sought before conducting Sheridan's crossexamination, all that matters is what was educed during testimony before the jury. For that reason, for the purpose of this analysis, it matters not at all that counsel asked to inquire about alleged promises that defendant's family would be released or alleged promises that the police made regarding Monica's or Victor's charges or the substance of what defendant learned about Monica's statements or the substance of defendant's telephone conversation with his mother. Counsel's requests to inquire into all of those subjects were denied and counsel fully complied with the trial court's ruling.

At that point, counsel informed the court that he intended to challenge only the truthfulness of defendant's confessions. When asked for clarification on this strategy, counsel explained:

"Whether the statement itself is a reliable rendition of what happened that night. It was taken down according to his wishes and it was not true in its ultimate.

"Your Honor, we have a dilemma where there's an oral statement and a written statement that essentially contradict themselves as to an essential fact. One will be reliab[le], one will not be."

The court then responded, "You know, we have an oral statement and a written statement that are contradictory to each other on their face." The court nevertheless warned defense counsel that if he sought to explain the contradictions by way of arguments that challenge the voluntariness of the confessions or the reliability of his statements based on his injury, it would open the door to the other murder confessions.

During the cross-examination of Sheridan, defense counsel elicited that Sheridan took a written statement from defendant on the late evening of November 6, 1996 or carly morning hours of November 7. Sheridan further testified that defendant met with his brother, Victor Cordero, at 8:00 P.M. and again at a later time in the evening. FN2 Counsel also elicited that defendant's second handwritten addendum to his written statement was made at 2:00 A.M. or possibly later.

FN2. The majority suggests that defense counsel's questioning about defendant's meeting with his brother was inappropriate (majority op. at 421, 779 N.Y.S.2d at 422, 811 N.E.2d at 1076), However, limited questioning about whether defendant told his brother that the Matos incident and the home invasions "stemmed from his personal relationship with Janette and Monica" was proper, particularly given that during Sheridan's direct examination, the prosecutor established that Sheridan had arranged a second meeting with Victor at which time defendant told Victor that he had confessed to the police, apologized for involving him in his crimes and said that Victor would have to testify against him.

*435 Following up on testimony educed during Sheridan's direct examination, counsel also elicited that defendant had orally stated that his wife had shot Matos. Sheridan testified that defendant told him that when the time came for his confession to be committed to writing he intended to say that he was the one who shot Matos. Defendant said that he intended to take the blame for the shooting because he believed that the incident was entirely his fault and because he wanted the death penalty. According to Sheridan's testimony, defendant stated that he would rather die than spend "a hundred years" in prison.

After defense counsel's cross-examination of Sheridan, the People made no argument that counsel opened the door to the other statements and did not otherwise seek to introduce the remainder of defendant's confessions. Neither did the court state that counsel's questioning warranted the introduc-

tion of the other murder confessions..***433
**1087 Defendant's attorney assured the court that he intended to argue that defendant's admission that he had pulled the trigger killing Matos was not true, but that he would not argue that the confession was involuntarily extracted.

Following a redirect examination and recross-examination of Investigator Sheridan on other matters, the prosecutor informed the court that he intended to conduct further redirect examination. At no time did the prosecutor argue that questions asked on re-cross-examination opened the door to defendant's confessions regarding the three uncharged murders.

However, in a sua sponte ruling, the trial judge stated that any challenge to the truthfulness of defendant's confessions and any argument as to the reasons that he altered his version of the Matos killing required the introduction of his statements regarding the three uncharged killings. The court reasoned that defendant's references to all four killings were so intertwined that the jury's assessment of the truthfulness of defendant's statements must include the confessions to all of the killings. The court added that defendant's statement that he would rather be sentenced to death than serve a hundred years in prison required the jury to be made aware of the other murders so that the statement would make sense.

Defense counsel vehemently objected to the introduction of the uncharged murders, noting that the only way to defend the *436 capital murder charge was to challenge the veracity of defendant's confessions. The court nonetheless maintained that the jury needed to consider all of the confessions in order to evaluate the credibility of defendant's rendition of the Matos killing.

The People conducted a further redirect examination of Sheridan, at which time he testified about defendant's confessions to the additional killings and read to the jury defendant's written statements which described each of the killings in full detail.

Sheridan also testified regarding his independent investigation into the nurders of Diaz and Toro. Specifically, Sheridan testified that on the morning of August 6, 1995, months before defendant's confessions, he had been called to Jay Street where he saw the lifeless bodies of Diaz and Toro. They were lying on top of one another in a pool of blood at the base of a pay telephone with its receiver dangling off the hook. Diaz had been pistol whipped several times with a large caliber handgun and had sustained four gunshot wounds to his head and two to his upper body. Toro had been shot once in his head and twice in his upper body.

Following Sheridan's testimony, the court gave a limiting instruction informing the jury that the evidence was not offered to show defendant's propensity to commit the crimes charged in the indictment, but to illustrate the circumstances of the confessions so that the jurors could evaluate their credibility. The court subsequently instructed the jury not to consider the truthfulness of the other murder confessions. Thus the court allowed evidence of the prior murders not because defendant had opened the door but because of the trial court's own conclusion that it was necessary to show whether the defendant was telling the truth in his confessions to the Matos killing.

Thereafter, in a written application, defendant moved for a mistrial based on the admission of the evidence of the three uncharged killings. Specifically, defendant argued that the other murder confessions should have been excluded under traditional Molineux principles because the evidence was not probative of any material issue in the case other than defendant's propensity toward violent behavior. Defendant***434 **1088 claimed that since be had already agreed not to challenge the voluntariness of his statements, the other murder confessions were not relevant to any issue related to voluntariness. He also argued that the evidence was not relevant to assess the truthfulness of his statements concerning the crimes charged. Defendant further argued that the prejudicial value of the evidence 811 N.E.2d 1053 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399) Page 37

outweighed its probative effect.

*437 In response to the motion, the People argued that the admission of defendant's other confessions was the result of extensive conferences with the court regarding the circumstances that would warrant the introduction of the evidence. The prosecutor argued that the evidence was probative of the voluntariness of defendant's admitted statements and that it was necessary to refute the defense contention that he had given a false confession in order to secure his family's release from jail.

In an oral decision, the trial court denied the motion, relying on its previous conclusions. The court stated that the evidence of the other murder confessions was relevant to address issues raised about the voluntariness and the truthfulness of defendant's statements, especially as they related to promises made by the police and their negotiations with the defendant for his statements.

C.

It is fundamental that evidence concerning a defendant's uncharged crimes or prior misconduct is not admissible if it cannot logically be connected to some specific material issue in the case, and tends only to demonstrate that the defendant was predisposed to commit the crime charged (see People v. Hudy, 73 N.Y.2d 40, 54, 538 N.Y.S.2d 197, 535 N.E.2d 250 [1988]; People v. Alvino, 71 N.Y.2d 233, 253, 525 N.Y.S.2d 7, 519 N.E.2d 808 [1987]; People v. Ventimiglia, 52 N.Y.2d 350, 359-360, 438 N.Y.S.2d 261, 420 N.E.2d 59 [1981]; People v. Allweiss, 48 N.Y.2d 40, 46, 421 N.Y.S.2d 341, 396 N.E.2d 735 [1979]). First pronounced by this Court in 1901 in People v. Molineux, 168 N.Y. 264, 61 N.E. 286 [1901], this evidentiary rule is widely recognized by state courts throughout this country and the federal courts have steadfastly adhered to it as codified by Federal Rules of Evidence rule 404(b). FN3 To be ***435 **1089 sure, long before our decision in Molineux, this rule, like many other *438 rules of evidence followed in this country, had its roots in 16th century England (see Joan L. Larsen, Of Propensity, Prejudice, and Plain Meaning: The Accused's Use of Exculpatory Specific Acts Evidence and the Need to Amend Rule 404(B), 87 Nw U L Rev. 651, 667 [1993]; see also 1A Wigmore, Evidence § 58.2, at 1213-1214 [Tillers rev. ed. 1983]). As this Court has recently noted, the progeny of Molineux have preserved its basic foundation: "a criminal case should be tried on the facts and not on the basis of a defendant's propensity to commit the crime charged" (People v. Rojas, 97 N.Y.2d at 36, 735 N.Y.S.2d 470, 760 N.E.2d 1265).

FN3. Contrary to the position of the majority and Judge Rosenblatt, this case does implicate People v. Molineux (see majority op. at 425 n. 26, 779 N.Y.S.2d at 425 n. 26, 811 N.E.2d at 1079 n. 26; dissenting op. at 455, 779 N.Y.S.2d at 445-446, 811 N.E.2d at 1099-1100). The issue here regards the admissibility of evidence that defendant had committed three murders which are not charged in this capital murder case. The Molineux rule deals with just this type of evidence of prior bad acts and requires that it be excluded unless it is probative of a material issue other than the defendant's criminal propensities, and its probative value outweighs its risk of prejudice to the defendant. Thus, it is the traditional Molineux principle that excludes this evidence in the first instance. The prosecutor never noticed the other murder confessions as Molineux evidence during the pretrial proceedings because he had assured defense counsel in a letter that he would not seek to introduce the confessions unfess defendant made them an issue at trial (one of the exceptions to the Molineux rule). But regardless of how the arguments were framed before the trial court, the conferences between the parties had all the earmarks of a Ventimiglia hearing, a progeny of Molineux, whereby the defense sought to obtain an advance ruling from the judge prohibiting the introduction of prejudicial testimony regarding defendant's prior criminal behavior. Furthermore, in his motion for a mistrial based on the introduction of the other murder confessions, defendant relied entirely on Molineux. Generally speaking, evidence that would otherwise be excluded under Molineux may be admitted where the evidence is probative of a material fact in the case being prosecuted. A material issue for which the evidence is probative does not necessarily have to arise in the People's direct case. Such an issue can arise as a result of defendant's testimony or an interposed defense. That circumstance would present an exception to the exclusion of the evidence pursuant to Molineux (see e.g. People v. Santarelli, 49 N.Y.2d 241, 247-248, 425 N.Y.S.2d 77, 401 N.E.2d 199 [1980] [evidence of defendant's past crimes relevant to rebut insanity defense]; People v. Calvano, 30 N.Y.2d 199, 205-206, 331 N.Y.S.2d 430, 282 N.E.2d 322 [1972]; People v. Alvino, 71 N.Y.2d at 246-247, 525 N.Y.S.2d 7, 519 N.E.2d 808 [evidence of prior drug sales admissible to rebut defendant's testimony that he did not sell drugs and that he possessed 21 glassines of cocaine for his own personal use]). Finally, it is not my position that "door opening" by the defense is not a valid reason to introduce evidence of prior bad acts. Indeed, this Court has said as much in People v. Rojas, 97 N.Y.2d 32, 735 N.Y.S.2d 470, 760 N.E.2d 1265 [2001]. It is my position, however, that a fair reading of the record reveals that the defense did not open the door in this case and that therefore, the confessions should have remained excluded pursuant to the Molineux

The evidence of a defendant's prior bad acts is "objectionable not because it has no appreciable probative value but because it has too much. The

natural and inevitable tendency of the tribunalwhether judge or jury-is to give excessive weight to the vicious record of crime thus exhibited and either to allow it to bear too strongly on the present charge or to take the proof of it as justifying a condemnation, irrespective of the accused's guilt of the present charge" (IA Wigmore, Evidence § 58.2, at 1212; see also Michelson v. United States, 335 U.S. 469, 475-476, 69 S.Ct. 213, 93 L.Ed. 168[1948]; People v. Rojas, 97 N.Y,2d at 36-37, 735 N.Y.S.2d 470, 760 N.E.2d 1265 ["propensity evidence invites a jury to misfocus, if not base its verdict, on a defendant's prior crimes rather than on the evidenceor lack of evidence-relating to the case before it"]; People v. Hudy, 73 N.Y.2d at 55, 538 N.Y.S.2d 197, 535 N.E.2d 250; People v. Ventimiglia, 52 N.Y.2d at 359, 438 N.Y.S.2d 261, 420 N.E.2d 59; People v. Allweiss, 48 N.Y.2d at 46, 421 N.Y.S.2d 341, 396 N.E.2d 735 ["The rule is based on policy and not on logic. It is *439 meant to eliminate the risk that a jury, not fully convinced of the defendant's guilt of the crime charged may, nevertheless, find against him because his conduct generally merits punishment"]). Therefore, "[w]here ... the evidence proves only criminal propensity and serves no other function in demonstrating defendant's guilt of the crime charged, there is no legitimate basis for its admission. No degree of care, in assessing its value and possible prejudice and in giving cautionary instructions, can render it otherwise" (People v. Alvino, 71 N.Y.2d at 253, 525 N.Y.S.2d 7, 519 N.E.2d 808).

Of course, evidence relevant to some material fact in the case, other than the defendant's criminal propensities, is not to be excluded merely because the evidence may reveal that defendant had committed other crimes (see People v. Ventimiglia, 52 N.Y.2.d at 359, 438 N.Y.S.2d 261, 420 N.E.2d 59 [the rule's "policy of protection ***436 **1090 against potential prejudice gives way when evidence of prior crime is probative of the crime now charged"]; People v. Allweiss, 48 N.Y.2d at 46-47, 421 N.Y.S.2d 341, 396 N.E.2d 735). Thus, evidence of defendant's uncharged crimes or bad acts

may be admitted to demonstrate motive, intent, the absence of mistake or accident, identity or a common scheme or plan (see People v. Molineux, 168 N.Y. at 293, 61 N.E. 286). The list is merely illustrative and not exhaustive (see People v. Rojas, 97 N.Y.2d at 37, 735 N.Y.S.2d 470, 760 N.E.2d 1265; People v. Ventimiglia, 52 N.Y.2d at 359, 438 N.Y.S.2d 261, 420 N.E.2d 59; People v. Santarelli, 49 N.Y.2d at 248, 425 N.Y.S.2d 77, 401 N.E.2d 199). Relevant here, this Court has recognized that evidence of a defendant's prior crimes may be introduced to refute a defendant's claims at trial (see People v. Alvino, 71 N.Y.2d at 246, 525 N.Y.S.2d 7, 519 N.E.2d 808; People v. Ingram, 71 N.Y.2d 474, 479-480, 527 N.Y.S.2d 363, 522 N.E.2d 439 [1988]; People v. Santarelli, 49 N.Y.2d at 248, 425 N.Y.S.2d 77, 401 N.E.2d 199).

Determination as to the admissibility of evidence of a defendant's uncharged crimes or prior bad acts requires a two-part inquiry. First, the proponent of the evidence must identify some material issue, other than the defendant's criminal propensity, to which the evidence is relevant (People v. Hudy, 73 N.Y.2d at 55, 538 N.Y.S.2d 197, 535 N.E.2d 250; People v. Alvino, 71 N.Y.2d at 242, 525 N.Y.S.2d 7, 519 N.E.2d 808). Second, the court must weigh the probative worth of the evidence against its potential for unduc prejudice resulting to the defendant (People v. Hudy, 73 N.Y.2d at 55, 538 N.Y.S.2d 197, 535 N.E.2d 250; People v. Alvino, 71 N.Y.2d at 242, 525 N.Y.S.2d 7, 519 N.E.2d 808). Thus, "fi)f the evidence is actually of slight value when compared to the possible prejudice to the accused, it should not be admitted, even though it might technically relate to some fact to be proven" (People v. Allweiss, 48 N.Y.2d at 47, 421 N.Y.S.2d 341, 396 N.E.2d 735).

Here, the majority concludes that defendant opened the door to the admission of his confessions to the three uncharged *440 murders. The evidence does not support this conclusion. The prosecutor did not argue at trial that the defendant had opened the door. And the court itself did not rule that de-

fendant's questioning of any witness had opened the door.

Both prior to and during the trial, the parties had discussed at some length the possible arguments defendant could make that would open the door to the remainder of defendant's confessions. The prosecutor had maintained that if defense counsel sought to challenge the voluntariness of his statement, or exploit the time gaps in the interrogation or sought to show that the statement was unreliable because defendant suffered from a leg injury, the remainder of the statements would become relevant to refute those contentions. Defense counsel agreed not to exploit the gaps in the interrogation time-line and agreed not to challenge the voluntariness of defendant's confessions.

Yet at no time following defense counsel's opening statement or during his cross-examination of the People's witnesses did the prosecutor ever claim that defense counsel had made an argument or sought to elicit any testimony to create a material issue in the case that could be answered by the introduction of defendant's confessions to the uncharged murders. At the time the trial judge ruled the confessions admissible, the prosecutor had not noted any action taken that had opened the door to that evidence. That behavior is quite telling since a prosecutor would normally urge the trial court to introduce otherwise excluded evidence in ***437 **1091 order to refute arguments offered by the defense. Moreover, even at oral argument, when asked at what point during the trial defense counsel had opened the door, the People could offer no definitive answer.

The majority nevertheless agrees with the People's argument, advanced for the first time on appeal, that defendant opened the door to the evidence by exploiting the unexplained gaps in the time-line of the interrogation. It is noteworthy that the trial court's reasons for admitting the evidence of defendant's uncharged crimes had nothing whatsoever to do with any purported exploitation of gaps in the time-line of defendant's interrogation.

2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

Moreover, there is no evidence in the record to support that conclusion. Defense counsel's remarks during his opening statement urging the jury to pay attention to the chronology of defendant's statements, taken in context, appeared to be merely an attempt to alert the jury to the fact that defendant had initially claimed that his wife shot Matos, voiced his intent to change his story when the confession was to be *441 memorialized and then claimed to have shot Matos himself in the written statement. At no time did he attempt to make it appear that the police had subjected defendant to a drawn-out interrogation process in order to extract an involuntary confession from him. Importantly, defense counsel had withdrawn his request for a jury charge on the voluntariness of the confessions and repeatedly assured the court that he did not intend to make any arguments to that effect.

Nor did defense counsel attempt to extract a time-line of the interrogation from the prosecution witnesses. Indeed, prior to the testimony of Investigator Sheridan, it was the prosecutor who elicited from its witnesses the approximate times of their encounters with defendant. And it was the prosecutor who first elicited from Sheridan that he first came into contact with defendant at 5:45 P.M. During Sheridan's cross-examination, defense counsel ascertained that defendant met with his brother at about 8:00 P.M. and again later in the evening. Sheridan also testified that at some point, defendant met with his wife. In addition, Sheridan testified that defendant made a second handwritten addendum to his statement concerning the Matos killing at approximately 2:00 A.M. However, not even these are indicative that defense counsel intended to exploit time gaps in the interrogation process to argue that defendant's statements were involuntary. He never specifically called upon Sheridan to illuminate that the interrogation spanned eight hours. As defense counsel had explained to the court, those questions were intended to establish when he had written the addenda in relation to the two occasions when he met with his brother and in relation to when he met with his wife. Even the prosecutor agreed during a conference with the court that the use of the evidence for that purpose would not warrant the admission of the other confessions. FN4

FN4. Contrary to the majority's view (majority op. at 427, 779 N.Y.S.2d at 427, 811 N.E.2d at 1081), it is not my contention that the People opened the door to a time-line by eliciting testimony that defendant confessed in an eight-hour interrogation or that his interview concluded in the early morning hours. But the People did first establish the time of the start of defendant's interrogation. It is my contention that the People opened the door with respect to defendant's leg injury.

Moreover, since defendant did not seek to challenge the voluntariness of his confession, it was not necessary for the prosecutor to account for the entire period of the interrogation. It was sufficient for the jury to know that defendant had given separate written and oral statements regarding***438 **1092 the Matos killingand *442 the two home invasions at the Avenue D apartment building. It was also apparent from the record that defendant had taken breaks during the course of the interrogation process. Thus, it would have been clear to the jury that defendant had been interrogated about different crimes by various police officers. And since nothing in the defense counsel's cross-examination suggested that the length of the interrogation suggested improper exertion on defendant which would affect the voluntariness or reliability of his confession, the door to the unrelated murder confessions was not

Even had defense counsel sought to exploit the time gaps in the interrogation process, it still would not have justified the introduction of the details of defendant's statements concerning the other murders. If the discrepancy in the timing of the interrogation became an issue, it would have been adequate to allow Investigator Sheridan to testify that the reason that defendant's interrogation had exten-

811 N.E.2d 1053

2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143

(Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

ded into the next morning was because in addition to confessing to the crimes here, defendant had been providing the police with information regarding several unrelated open investigations. Since it would not have been necessary to delve into the specifics of the remainder of defendant's statements, there was no reason to admit this evidence to explain any time gap in the interrogation.

Also in concluding that the defense opened the door to the confessions concerning the additional killings, the majority cites Sheridan's testimony regarding the leg injury that defendant suffered from throughout the interrogation (majority op at 419, 422, 426). However, it was the People who introduced that evidence, not the defense. During the direct examination of Sheridan, the following exchange took place:

- "Q. Before leaving the interview room, did you have any conversation with the defendant about his physical condition?
- "A. Yes, we did.
- "Q. What, if anything, did you ask the defendant and what, if anything, did he tell you about his condition?
- "A. I asked him if he was injured and he said he was.
- "Q.... Why did you ask him if he was injured?
- *443 "A. Well, just in talking with him I could see that he was having, he was in a little bit of pain. He would wince from time to time. As I said before, I noticed he was limping, so-he was having some trouble with his leg, so I asked him if he was injured.
- "Q. What did he tell you?
- "A. He said he was and started to pull his pant leg up and I could see that there was a wound, or what I assumed was a wound, that was bandaged on his leg.

"Q. When you say bandaged, what did you actually see on his leg?

Page 41

"A. I saw clean, white gauze wrapped around his shin area of his lower right leg."

The prosecutor then introduced People's exhibit 41, which was a photograph of defendant's leg at the time of the interrogation. In the photograph, the gauze wrapped around defendant's leg was visible.

The following exchange subsequently took place between the prosecutor and Sheridan:

- "Q. What did the defendant do after he pulled his pant leg up?
- "A. He started to unwrap the gauze to show me his injury, and I stopped him ***439 **1093 and I said, you know, just leave it alone. I-
- "Q. Why did you do that?
- "A. Well, it appeared to be pretty well wrapped up and I didn't want to disturb it any further. The injury did not appear to be bleeding. There did appear to be some blood on the gauze but it was not bleeding at the time that I looked at it so I wanted it to stay in the condition that it was in at that time.
- "Q. What happened when you told him not to unwrap it any more?
- "A. He stopped unwrapping it and then he wrapped the gauze back around and put his pant leg back down."
- "Q. After he did that, did you have any otherwell, did you ask him if he knew how that happened?
- *444 "A. Yes, I did.
- "Q. What did he tell you?
- "A. He said he wasn't sure. He said that it happened earlier that morning on Avenue D but

811 N.E.2d 1053

2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

Page 42

he just wasn't sure how he got hurt.

"Q. Did you ask him if he was shot?

"A. I did.

"Q. What did he tell you?

"A. He said he just wasn't sure what it was. He said things happened so fast on Avenue D he just doesn't know how he got injured.

"Q. So the only thing he told you definitely was that it happened that morning on Avenue D?

"A. Right.

"Q. Did you offer medical treatment at that point?

"A. Yes.

"Q. How did you do that?

"A. I asked him if he wanted to go to the hospital and get some treatment for it.

"Q. What did he tell you?

"A. He adamantly replied, no, he didn't, he wanted to get this cleared up.

"Q. Up until that point what, if any, observations had you made of the defendant's physical condition?

"A. He was alert, conscious, able to field the questions, intelligent. He was excited at times and he obviously, he was in slight discomfort from time to time but he didn't want any medical treatment for it, and we had no difficulties communicating between the two of us."

By contrast, defense counsel's cross-examination of Sheridan regarding defendant's leg injury consisted entirely of the following exchange:

"Q. And you accompanied Mr. Mateo from one interrogation*445 room to the next to basically

juggle positions with people in other rooms; is that right?

"A. Yes, it is.

"Q. And he was limping at that point, right?

"A. I believe he was.

"Q. Did you give him assistance or did you walk next to him or what?

"A. No. It wasn't a real noticeable staggered limp. I could see he was limping slightly. Just an observation. But, no, I didn't need to give him any physical assistance."

It is unreasonable to conclude as the majority does that defense counsel's questioning "creat[ed] the impression that the injury rendered the confession unreliable" (majority op. at 426 n. 27, 779 N.Y.S.2d at 426 n. 27, 811 N.E.2d at 1080 n. 27). If the door to the other murder confessions was opened based on the evidence of defendant's leg injury, it was the People's in-depth examination regarding the injury coupled with their introduction of the photograph depicting defendant's bandaged ***440 **1094 leg that opened the door. Defense counsel's limited questions about whether defendant had a limp surely could not be to blame. Having introduced the evidence themselves, the People should not thereafter complain that the excluded evidence should be admitted because of the possibility that the defendant might use it to argue that his statement was involuntary and unreliable, even though the defendant had not yet done so. If the People can circumvent an order excluding evidence of prior bad acts by introducing evidence that, if introduced by the defendant, would open the door to those prior bad acts, the Molineux rule would lose much of its potency.

It should also be noted that even if defendant's leg injury would create the impression for the jury that defendant had been suffering throughout the interrogation and that it would affect the voluntariness of his statement, Sheridan's testimony that he 811 N.E.2d 1053 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 Page 43

offered defendant medical assistance but defendant declined it and insisted on continuing the interrogation suffices in dispelling that impression.

(Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

The majority further states that because of the exclusion of the evidence of the other murder confessions the People had been barred from explaining why defendant had been concerned for his family throughout his interrogation (majority op. at 419, 779 N.Y.S.2d at 421, 811 N.E.2d at 1075). That is not the case. The People elicited from Police Officer Di-Mascio*446 (who testified before Sheridan) that defendant's brother, Victor Cordero, was arrested along with defendant. Moreover, Sheridan testified on direct examination that when he first met defendant, he was in an interrogation room that was adjacent to one in which another of defendant's brothers, Gilberto Gomez, was being held. Finally, Sheridan testified that defendant's wife was also in custody at the time of defendant's interrogation. This evidence was more than sufficient to explain why defendant would have been concerned for his family. Moreover, the prosecutor never claimed that questions that resulted in answers that defendant had expressed concerns for his family would open the door to the other murder confessions. On the contrary, during discussions with the court, the prosecutor stated, "In terms of a general question to the investigator, did the defendant express concern for his family. I think that type of a general question could be asked without opening the door to the other murder[s]."

The majority also concludes that defense counsel opened the door to defendant's confessions to the uncharged murders by challenging the truthfulness of his confession of the Matos murder. However, in so concluding, the majority misconstrues the defense strategy. For example, the majority's opinion suggests that defendant's confessions to the Matos killing were essentially consistent, and that the defense had only the option of explaining why they should not be believed (i.e., because he was only trying to protect his family or because his power was overborne as a result of the long inter-

rogation and the leg injury). This fails to account for that portion of Sheridan's testimony in which he stated that defendant had originally claimed that Szlekovics shot Matos and then changed his story to claim that he had shot Matos. The majority also creates the impression that the only mention by defendant that he wanted the death penalty came during defense counsel's re-cross-examination, at which time an objection to the question was sustained (majority op. at 423, 427, 779 N.Y.S.2d at 423-424, 426, 811 N.B.2d at 1077-1078, 1080). FN5 In fact, during the ***441 **1095 prosecutor's direct examination of Sheridan, the following exchange took place:

FN5. Contrary to the majority's assertion (majority op. at 427, 779 N.Y.S.2d at 426, 811 N.E.2d at 1080), defendant never said that he was confessing because he wanted the death penalty. Rather, he said that he was changing his story about the Matos killing and taking the blame for it because he wanted the death penalty.

"Q. Now, during the course of that conversation did *447 there come a time when you asked him further questions regarding who actually pulled the trigger and fired the shot that killed Mr. Matos?

"A. Yes.

"Q. What did you ask him?

"A. Well, at one point I looked Mr. Mateo right in the eye and I said, who really pulled the trigger in the basement-meaning the basement of the Saxton Street house-and he looked at me and he said why, and I said because I think Monica did it...

"Q. What did he tell you?

"A. When I said I believe Monica did it, we believe Monica did it, he said she did. I couldn't believe it. She is a crazy bitch, shot the guy. In other words, he didn't expect her to pull the trigger. 811 N.E.2d 1053

2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite us: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

But he said he was at the top of the stairs and she shot the guy in the head, which surprised him.

- "Q. So, at that time he fold you he was at the top of the steps when Mr. Matos was shot?
- "A. Right.
- "Q. What did he tell you after that?
- "A. He said, he said after he told me that Monica did it, he then said, but I'm going to say that I did it when I give you my statement.
- "Q. Did you ask him about that?
- "A. Sure. I said why. And he said, because I want the death penalty.
- "Q. Did you ask him about that?
- "A. Yes.
- "Q. What did you ask him and what did he tell you?
- "A. I simply said, why, why do you want the death penalty, and he said because he was-and he used the Spanish term which means king-he said, I'm a king and I can't do a hundred years in jail. He said, I can't take my life because I am a king so I want *448 the death penalty for this, and he also said because he deserved it.
- "Q. During that conversation when he told you he was going to take the blame for it, did he tell you anything about whose fault he believed this was?
- "A. Oh, he continually said that it was his fault for Sherer Street."
- Of course, on cross-examination, defense counsel followed up on this testimony:
- "Q. And essentially you looked him right in the eye and you said, "Who actually pulled the trigger"? Is that correct?
- "A. Right.

"Q. And in response to that Mr. Mateo looked at you and said, 'Why?' Is that right?

Page 44

- "A. Yes
- "Q. And you in turn told him that you believed Monica did it?
- "A. Yes.
- "Q. And in response to that, Mr. Mateo indicated she did and that he couldn't believe it. And that she was crazy. He couldn't believe she shot him; is that right?
- "A. Yes.
- "Q. And he was at the top of the stairs when she shot him and didn't even see her shoot him; is that correct?
- **1096 "A. Right.
- ***442 "Q. And it's fair to say during this particular exchange when you looked Mr. Mateo right in the eye and you say who actually pulled the trigger, and he responds, his demeanor changed; is that right?
- "A. Yes.
- "Q. And it changed, it was different from what it was previous to this; is that correct?
- *449 "A. Yes.
- "Q. Now, after he indicates to you that he was surprised at this, he said I'm still going to take the blame for it, I'm going to take the []rap for it; is that right?
- "A. Yes, he did.
- "Q. And you basically followed that up with why if she did it are you going to take the []rap for it?
- "A. That's right.
- "Q. And he indicated to you he's going to take the

811 N.E.2d 1053 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 Page 45

[] rap for it because it's his fault and he wants the death penalty; is that right?

(Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

"A. That's right.

"Q. And you pretty much followed up on that: Well, why do you want the death penalty? Basically you followed up on that: Why do you want the death penalty? Is that correct?

"A. Yes.

"Q. He indicated, he used that Spanish term for king and he didn't want to do a hundred years in prison, he'd rather die; is that right? Something along those lines?

"A. Yes. And that he deserved it and he couldn't take his own life.

"Q. He also indicated to you that living in jail for a hundred years would hurt his mother too much?

"A. Yes."

The importance of this testimony cannot be overstated for it is at the heart of the defense strategy. The majority mischaracterizes the defense as attempting to demonstrate that after being arrested, defendant discovered that his wife was a prime suspect in the Matos killing and then offered to implicate himself in order to protect her from prosecution. This, however, was not the actual strategy of the defense. The defense sought to establish, not why defendant confessed to the Matos killing in the first place but, given that defendant had offered conflicting accounts of who killed Matos, which account was true. The defense sought to establish that defendant's oral statement that *450 his wife killed Matos and that it was a surprise to him was true, rather than his written statement in which he claimed to have shot Matos himself.

From his opening statement to the jury, defense counsel sought to show that defendant neither killed Matos nor ordered his wife to do so and that his wife acted on her own. Counsel's emphasis on defendant's admission that he was taking the blame for the killing because he felt responsible for it and wanted the death penalty was an attempt to demonstrate defendant's motivation for changing his story, which would support the defense position that the oral statement should be believed over the written one.

FN6. According to the majority, the defense tried to convince the jury that he had changed his account of the Matos killing in order to protect his wife from prosecution (majority op. at 427 n. 28, 779 N.Y.S.2d at 426-427, 811 N.E.2d at 1080-1081). In fact, defense counsel sought to show that defendant's motivation for changing his story was apparent from his statement to the police that he would take the blame for the murder his wife committed, not out of a desire to protect her, but rather to ensure that he received the death penalty. Evidence that defendant had confessed to three uncharged murders does not refute this argument, but rather supports it. Undoubtedly, from defendant's perspective, the more murders to which he confessed, the more likely that he would receive canital punishment. Thus, the door to the other murder confessions was not opened by this argument.

***443 **1097 Had the defense been successful in convincing the jury that Szlekovics shot Matos and that it was a surprise to defendant (which would tend to disprove the People's theory that he commanded her to kill), as he claimed during the oral confession, then he would have been convicted of only second-degree murder, but not first-degree murder. For the purpose of this strategy, it was not necessary for the jury to know that defendant had offered to tell the police about four murders in exchange for the release of his family from custody. The jury was not being called upon to decide what would motivate defendant to offer any confession at all. The defense was trying to persuade the jury

only that the oral confession rather than the written one was the true account of the killing. FN7

FN7. It is for this reason that I disagree with Judge Rosenblatt's assessment that defendant tried to "create a false impression about the nature of his confession" and thereby opened the door if only slightly (dissenting op. at 456, 779 N.Y.S.2d at 447, 811 N.E.2d at 1101).

The defense was perfectly entitled to pursue a strategy challenging the truthfulness of defendant's confessions about the Matos killing without risking the introduction of the unrelated murder confessions. Regardless of defendant's statements concerning the uncharged murders, there can be no question that defendant lied in his rendition of the murder of Juan Matos.*451 Defendant said that his wife shot Matos and expressed surprise that she had done so. He then said that when the time came for his statement to be committed to writing, he would say that it was he who shot Matos. When his statement was memorialized, defendant claimed to have been the shooter. Since the victim was shot only one time, defendant's two versions of the killing in which he identified different shooters necessarily meant that he lied about the circumstances of the killing. Even the trial judge acknowledged that the contradiction was apparent on the face of the confessions. And by the People's indictment against defendant, they acknowledge that because of defendant's contradictory statements, not even they could determine the identity of the shooter. It was for this very reason that the People were forced to employ alternative theories for the killing-on the one hand arguing that defendant pulled the trigger, and on the other hand arguing that defendant's wife killed Matos at defendant's command.

Therefore, the real issue that the jury had to decide was whether defendant shot Matos; or his wife shot Matos at defendant's command; or defendant's wife shot Matos without having been commanded by defendant to do so. The evidence that defendant had also confessed to three additional murders could not possibly assist the jury in determining which of defendant's versions of the Matos shooting was true. None of the other three murders was in any way related to Matos's killing. They involved different dates, different accomplices and different motives. The evidence of defendant's confession to the killings of Diaz, Toro and Holley was probative only of defendant's propensity to kill and served no other function in demonstrating his guilt of the crimes charged here. Thus, there was no legitimate basis for its admission and it should have been excluded as a matter of law (see People v. Hudy, 73 N.Y.2d at 54, 538 N.Y.S.2d 197, 535 N.B.2d 250).

That the evidence of the three uncharged murders was introduced in such a way as to demonstrate defendant's proclivity***444 **1098 to murderous behavior was apparent by the manner in which the evidence was introduced. In addition to permitting Sheridan to testify about defendant's confessions detailing the circumstances of the other murders and to read the written statements to the jury, he was permitted to testify in detail about his own investigation into the murders of two of the victims. Sheridan told the jury that on the day after the murders (which took place months before defendant confessed to them), he had gone to the murder scene and discovered the bodies of Diaz and Toro. *452 Sheridan described the positions of their bodies and testified to their numerous gunshot wounds and injuries. There was no proper basis for the admission of testimony regarding Sheridan's independent investigation into the uncharged murders. It was not germane to any issue to be decided in this case but rather was an apparent attempt to establish defendant's guilt in the deaths of Diaz and Toro. The only possible reason for making such a showing would be to establish defendant's propensity to kill. As such, there was no legitimate basis for the admission of this evidence, and its admission constituted error (see People v. Hudv. 73 N.Y.2d at 54, 538 N.Y.S.2d 197, 535 N.E.2d

It is also necessary to recognize that even if the

confessions to the uncharged murders were probative of defendant's contradictory confessions to the Matos killing, their probative value was necessarily hindered by the trial judge's jury instructions. On the one hand, the trial judge told the jurors that the uncharged murder confessions were admissible only to allow them to assess the truthfulness of defendant's statement regarding the Matos killing. On the other hand, the court instructed them not to consider the truthfulness of the statements concerning the other murders. Such an instruction frustrates the purpose of admitting the evidence in the first place. If the jury is not to rely on the confessions as being true, it cannot possibly use them to assess the truthfulness of defendant's confession regarding the Matos killing. The evidence of the uncharged murders could provide a useable measure of credibility only if the jury could rely on its credibility. The court's instruction disavowed the evidence even for this purpose. As such, there was plainly no use for this evidence other than to show defendant's propensity to commit the crimes charged.

Although the majority downplays the prejudice flowing to defendant from the introduction of his confessions to the three uncharged murders, the prejudice here was overwhelming. It is difficult to imagine what could be more prejudicial to a defendant in a capital murder trial than evidence that on separate occasions he had killed three people in addition to the person he stands accused of killing. It is likewise difficult to imagine that a jury could possibly avoid using the evidence of defendant's uncharged crimes, for which he had yet to be brought to justice, to conclude that he had such a violent character that he likely committed the crimes charged. After all, the jury learned that defendant was a hired gun for a drug dealer and had killed to avenge the theft of a bicycle. It is certainly doubtful that the *453 jury could have avoided the conclusion that defendant was just the type of person who would have killed Juan Matos and committed the crimes at the Avenue D apartment building.

Under the circumstances presented here, the risk of unfair prejudice flowing from the introduction of this evidence substantially outweighed its probative value. That defendant challenged the truthfulness of his confession in no way tipped the scales in favor of introduction of the evidence, ***445 **1099 especially since defendant offered contradictory accounts of who killed Matos.

The majority concludes that the jury would not have been unduly prejudiced by the evidence of defendant's additional murder confessions because of the evidence of his crimes at the Avenue D apartment building and the Matos killing. Defendant faced a possible death sentence upon a first-degree murder conviction for the Matos killing. The defense theory of the case was that Szlekovics had killed Matos without having been commanded to do so and that therefore defendant should be convicted of second-degree rather than first-degree murder. Importantly, the difference between the degree of conviction defendant would receive rested primarily on which version of his confession to the Matos. killing the jury believed. The evidence that defendant had killed three other people in addition to Matos could not possibly help the jury to determine whether defendant's oral or written confession to the Matos murder was true. But alerting the jury that defendant had actually killed not one but four people created an unjustifiable risk that the jury would convict him for the highest possible degree of murder because his murderous behavior generally warrants punishment (see People v. Molineux, 168 N.Y. at 292, 61 N.E. 286 [other crimes evidence "would lead to convictions, upon the particular charge made, by proof of other acts in no way connected with it, and to uniting evidence of several offenses to produce conviction for a single one," quoting Coleman v. People, 55 N.Y. 81, 90 (1873)]). Significantly, in this case, there was no mechanism available by which the jury could otherwise hold defendant accountable for those three additional murders. By contrast, the jury had the power to punish him for the Avenue D home invasions by convicting him.

811 N.E.2d 1053 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399) Page 48

As Chief Judge Cardozo aptly noted, "[i]f a murderous propensity may be proved against a defendant as one of the tokens of his guilt, a rule of criminal evidence, long believed to be of fundamental importance for the protection of the innocent, *454 must be first declared away" (People v. Zackowitz, 254 N.Y. 192, 197, 172 N.E. 466 [1930]). The evidentiary rule set forth in Molineux is the law of this state. As such, it must be applied equally-even to the most unworthy of defendants, and even if it means the toil of a retrial.

To be sure, an assignment of error to the introduction of defendant's confessions to three uncharged murders would necessitate a reversal of his conviction and a new trial on all charges. But justice requires that we faithfully apply the law to the facts of the case before us. Many decades ago, Judge Fuld, writing for this Court declared, "Vicious though the erime was, convincing though the evidence of guilt may seem to be, we could affirm only if we were to announce a doctrine that the fundamentals of a fair trial need not be respected if there is proof in the record to persuade us of defendant's guilt. We are not prepared to announce such a doctrine" (People v. Mleczko, 298 N.Y. 153, 163, 81 N.E.2d 65 [1948]). The introduction of the confessions to three murders unrelated to the crimes for which defendant was on trial deprived him of a

Because the trial court's admission of defendant's confessions regarding three uncharged murders was in direct violation of the *Molineux* rule, I dissent from the majority and vote to reverse defendant's conviction and to remand the case for a new trial

ROSENBLATT, J. (dissenting).

Although both the majority's and Judge Smith's writings are compelling, I am not fully in accord with either and therefore ***446 **1100 write separately. Apart from its reatment of the trial court's ruling regarding defendant's confession (the pivotal issue separating Judge Smith from the Court), I find the majority opinion persuasive.

To begin with, I join the Court in rejecting defendant's claim that the People corrupted the truthfinding process by advancing one theory at his trial after having advanced what he asserts was an inconsistent theory at Monica Szlekovics's trial. Further, due process does not, in my view, require the jury to embrace one of the People's theories (that defendant killed Matos by his own hand or commanded Szlekovics to do so) to the exclusion of the other. Because the jury arrived at a unanimous determination that either was the case, it should not matter whether some jurors thought defendant pulled the trigger and others thought he ordered Szlekovics to do so. Further, I agree that defendant's statement was voluntary and that the verdict comported with the weight of the evidence.

*455 Like Judge Smith, however, I would hold that the trial court committed reversible error by allowing the jury to hear detailed recitations as to defendant's three unrelated murders. The majority concluded that this was an acceptable ruling, while Judge Smith calls it a *Molineux* error. Judge Smith adds that proof of defendant's having committed the three other murders was not at all relevant to the truthfulness of defendant's confession and could not possibly help the jury in determining exactly how Matos met his death.

In my view, the majority correctly decided not to characterize its ruling as a Molineux exception. As the majority points out, no one even mentioned Molineux, by name or in principle, when the court was considering whether to allow the jury to learn of the other three murder confessions (see majority op. at 425 n. 26, 779 N.Y.S.2d at 425 n. 26, 811 N.E.2d at 1079 n. 26). Molineux issues generally arise when the prosecution seeks to introduce proof of uncharged crimes to prove that a defendant committed the crime charged. Molineux evidence, in this sense, is often an offensive weapon employed by prosecutors to persuade the jury of a defendant's guilt. Thus, when a Molineux exception applies, FN1 the prosecution may, on its direct case, introduce evidence of a defendant's uncharged crimes

and need not wait until the defendant presents something the prosecution needs to negate (see e.g. People v. Cook, 93 N.Y.2d 840, 688 N.Y.S.2d 89, 710 N.E.2d 654 [1999]; People v. Cohen, 5 N.Y.2d 282, 184 N.Y.S.2d 340, 157 N.E.2d 499 [1959]). Of course, as a defensive tactic, the prosecution may introduce evidence of uncharged crimes to negate a claim of accident, mistake, or the like (see People v. Rojas, 97 N.Y.2d 32, 735 N.Y.S.2d 470, 760 N.B.2d 1265 [2001]; see also People v. Ingram, 71 N.Y.2d 474, 527 N.Y.S.2d 363, 522 N.E.2d 439 [1988]; People v. Goldstein, 295 N.Y. 61, 65 N.E.2d 169 [1946]). Here, the prosecution did not seek to introduce proof of the three unrelated murders either to prove that defendant killed Matos or that he had a murderous propensity to do so (personally or by command). Indeed, the People fully abided by the trial court's initial ruling that any reference to the three murders was taboo. There is no doubt that if defendant had not "opened the door," the trial court would never have let the jury know of defendant's other murders.

FN1. We discussed the *Molineux* rule and its exceptions most recently in *People v. Rojas*, 97 N.Y.2d 32, 735 N.Y.S.2d 470, 760 N.E.2d 1265-[2001].

***447 **1101 The question, therefore, is whether the court was justified in allowing proof of three unrelated murders in reaction to defendant's having opened the door. As with most "door opening" rulings, this one requires us to examine a number of factors, *456 including the size of the opening and what lay on the other side of the door. Here, defendant sought to exploit the court's preclusive ruling and create a false impression about the nature of his confession. Nevertheless, in balancing these considerations I conclude that the ruling was wrong and fell far outside any tolerable exercise of discretion.

It is not enough to say that defendant opened the door. In many trials, parties open doors to the introduction of proof. Sometimes they fling the doors wide open; other times, they open them just a crack. The trial judge's response should be proportionate and reflect the size and nature of the opening. Here, the court's response, to admit the three confessions, was inordinately prejudicial.

This is true for a number of reasons. I agree that the court cautioned the defense to be careful in how it went about challenging the truthfulness or reliability of the Matos confession. But I cannot agree that, to the extent he strayed at all, defense counsel strayed appreciably beyond the boundaries of the court's preclusive order or that his transgression called for such an extreme ruling. More importantly, the prosecution did not ask for it. Ordinarily, a trial court can count on a party to protest that its adversary opened the door to proof that in fairness should be explained or refuted. The court's unsolicited decision to allow proof of defendant's three other murders (and thus acquaint the jury with defendant's true "motivations" for confessing to the Matos murder) was prejudicial in the extreme.

It is a fundamental tenet of evidence law that a court, when assessing the admissibility of evidence, engage in a weighing process, balancing prejudice against probative value. Here, however, the court failed to undertake any such analysis. The record is bereft of any mention of the court's considering possible prejudice. Indeed, in the protracted discussions before it allowed the confessions into evidence, the court never so much as mentioned the word "prejudice" or its equivalent.

Nevertheless, the introduction of the other confessions was overwhelmingly prejudicial. FN2 The central question for the jury was whether defendant pulled the trigger or ordered his wife to do so-or did neither, in which case he would be guilty of *457 (intentional) murder in the second degree, as an accomplice. In this setting, the court allowed the jury to learn that defendant was (at least) a three-time murderer. No evidence could have had a more pernicious impact on the jury than defendant's homicidal history. The admission of detailed evidence of three unrelated murders would undermine the neutrality and dispassion of even the fairest and

2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143 (Cite as: 2 N.Y.3d 383, 811 N.E.2d 1053, 779 N.Y.S.2d 399)

most diligent of factfinders.

FN2. While I do not see this as a Molineux exercise, the end result, for me, is the same. Under a Molineux analysis, the test boils down to a battle between prejudicial effect and probative value. In evaluating the "door-opening" type evidence before us, the test is precisely the same, and leads, in my view, to the same result that Judge Smith reaches.

When discussing door openers, an appropriate starting point would be the case in which a defendant's conduct at trial most obviously opens the door to the introduction of confessions that reveal uncharged crimes: if a defendant with an established history of violence testifies and ***448 **1102 purports to be a peaceable person, surely the prosecutor could explode the lie and impeach the defendant with otherwise precluded or suppressed admissions proving the contrary. $\stackrel{\cdot}{FN3}$ Even if a defendant does not testify, but falsely creates the impression of being nonviolent, the prosecution would have a strong basis to argue that the jury was being misled and that the defendant should pay a heavy price for such duplicity. Here, however, defendant neither testified nor asserted any facts in conflict with his having committed three previous murders. Defense counsel merely asked oblique questions about the circumstances of the interview. It is hard to see how these mildly suggestive queries stood to be properly refuted by proof that he murdered three other people. It is hard to see how the details of three homicides were appropriate to refute what amounted to innuendo. I cannot agree with Judge Smith that the confessions were entirely irrelevant, but I believe that their relevance was slight.

> FN3. See e.g. Harris v. New York, 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed.2d 1 (1971); Walder v. United States, 347 U.S. 62, 74 S.Ct. 354, 98 L.Ed. 503 (1954); People v. Maerling, 64 N.Y.2d 134, 485 N.Y.S.2d 23, 474 N.E.2d 231 (1984); People v. Kuliv, 18 N.Y.2d 318, 274

N.Y.S.2d 873, 221 N.E.2d 541 (1966).

Here, the appropriate response-one proportionate to the sliver of an opening defendant createdmight have been to allow the prosecution to establish that defendant revealed having committed other crimes. This would have blunted any possible claim that the police were overbearing in questioning defendant for several hours. Further, it would have neutralized defendant's dubious suggestion that by confessing to the Matos murder he was engaging in a noble fraud to exonerate his family. Of course, the jurors might have speculated about those other crimes, but could not easily leap to the conclusion that "other crimes" meant three vicious homicides. Even if the trial court had some *458 legitimate basis to inform the jury that defendant confessed to a trio of other murders, it should have stopped there. Defendant's confessions to these other homicides were lengthy and graphic, and the trial court improperly permitted the jury to hear every detail.

For these reasons, I would reverse defendant's conviction and order a new trial

Judges CIPARICK, GRAFFEO, READ and R.S. SMITH concur with Chief Judge KAYE.

Judge G.B. SMITH dissents and votes to reverse and order a new trial in a separate opinion.

Judge ROSENBLATT dissents and votes to reverse and order a new trial in another opinion.

Judgment modified by vacating defendant's sentence and remitting to County Court, Monroe County, for resentencing in accordance with the opinion herein and, as so modified, affirmed. Appeal from County Court order dated March 11, 1999 dismissed.

N.Y.,2004. People v. Matco 2 N.Y.3d 383, 811 N.B.2d 1053, 779 N.Y.S.2d 399, 2004 N.Y. Slip Op. 01143

Westlaw.

124 S.Ct. 2918

542 U.S. 939, 124 S.Ct. 2918, 159 L.Ed.2d 815, 72 USLW 3734, 72 USLW 3764, 72 USLW 3768

(Cite as: 542 U.S. 939)

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Supreme Court of the United States
Eliot SPITZER, Attorney General of New York, petitioner,

v.
Angel L. MATEO, et al.

No. 03-1589, June 28, 2004.

Case below, 2 N.Y.3d 786, 812 N.E.2d 1258.

Petition for writ of certiorari to the Court of Appeals of New York denied.

U.S.,2004 Spitzer v. Matco 542 U.S. 939, 124 S.Ct. 2918, 159 L.Ed.2d 815, 72 USLW 3734, 72 USLW 3764, 72 USLW 3768

Westlaw.

124 S.Ct. 2929 542 H.S. 946, 124 S.Ct. 2929, 159 L. Ed 2d 828, 72 H Page 1

542 U.S. 946, 124 S.Ct. 2929, 159 L.Ed.2d 828, 72 USLW 3734, 72 USLW 3764, 72 USLW 3769 (Cite as: 542 U.S. 946)

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Supreme Court of the United States NEW YORK, petitioner,

v.
Angel L. MATEO, et al.

No. 03-1570. June 28, 2004.

Case below, 2 N.Y.3d 383, 779 N.Y.S.2d 399, 811 N.E.2d 1053.

Motion of respondent for leave to proceed in forma pauperis granted. Petition for writ of certiorari to the Court of Appeals of New York denied.

U.S.,2004 New York v. Mateo 542 U.S. 946, 124 S.Ct. 2929, 159 L.Ed.2d 828, 72 USLW 3734, 72 USLW 3764, 72 USLW 3769

Slip Copy, 2009 WL 3273878 (W.D.N.Y.) (Cite as: 2009 WL 3273878 (W.D.N.Y.))

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Only the Westlaw citation is currently available.

United States District Court, W.D. New York. Angel MATEO, Petitioner,

Dale ARTUS, Superintendent of Clinton Correctional Facility, Respondent.

No. 05-CV-0206 (MAT). Oct. 9, 2009.

Daniel J. Henry, Jr., Villarini & Henry, L.L.P., Hamburg, NY, for Petitioner.

Wendy Evans Lehmann, Rochester, NY, for Respondent.

ORDER

MICHAEL A. TELESCA, District Judge. 1. Introduction

*1 Petitioner Angel Mateo ("petitioner") filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging two convictions in Monroe County Court before Judge John Connell.

> FN1. It is procedurally proper for petitioner to raise his challenge to the capital and non-capital conviction in a single § 2254 petition. See 28 U.S.C. § 2254, Rule 2(e) Governing § 2254 Habeas Proceedings (West 2009); Former Rule 2(d) Advisory Committee Notes 1976 ("[A] single petition may assert a claim only against the judgment or judgments of a single court (i.e., a court of the same county or judicial district or circuit). This permits, but does not require, an attack in a single petition on judgments based upon separate indictments or on separate counts even though sentences were imposed on separate days by the same court.")

Petitioner was first found guilty by a jury of Murder in the First Degree (N.Y. Penal Law § 125.27(1)(a)(vii)), as well as various counts of Kidnapping in the Second Degree, Kidnapping in the First Degree, Criminal Possession of a Weapon in the Third Degree, Murder in the Second Degree, Attempted Murder in the First Degree, Burglary in the First Degree, and Assault in the First Degree. He was sentenced to death for the first-degree murder conviction and a total of 128 1/2 years imprisonment for the remaining counts. This conviction is hereinafter referred to as "the capital case".

On November 8, 1999, petitioner was again found guilty by a jury of five counts of Murder in the Second Degree (Penal Law § 125.25(1), (3)) ("the non-capital case"). For that conviction he was sentenced to 25-years-to-life, consecutive as to each of the three victims for a total of 75 years.

For the reasons that follow, the Court finds that petitioner is not entitled to habeas relief.

II. Factual Background and Procedural History

Between August 6, 1995 and November 2, 1996, petitioner and various accomplices engaged in a crime spree involving kidnappings, assaults, burglaries, and four murders in the City of Rochester that resulted in two separate trials in Monroe County Court. FN2 The string of attacks relating to the capital case was, according to petitioner, part of an obsessive quest to locate his estranged girlfriend Cindia Janette Sanchez ("Janette"), who left him after months of brutal treatment and took refuge in a women's shelter. With the help of his brother ("Victor") and his wife ("Monica") petitioner conducted a month-long pursuit of Janette that left a bloody trial in its wake.

FN2. Petitioner was originally charged in a 22-count indictment including three counts of Murder in the First Degree. Two of those counts charged petitioner with first degree murder on a serial killer theory,

which were eventually dismissed by the state court. The remaining count of first degree murder, as well as charges of attempted murder, second degree murder, kidnapping, criminal possession of a weapon, burglary, and assault, were severed from the indictment and were the subject of a capital trial held over a period of two years in Monroe County Court. Three of the murders were unrelated to the other charges and petitioner was accordingly tried separately.

A. The Non-Capital Case

The murders of Johvanny Diaz and Joangel Toro

During the early morning hours of August 6, 1995, Johvanny Diaz ("Johvanny") and an acquaintance, Joangel Toro ("Joangel") were killed in a hail of bullets on Jay Street in the City of Rochester by petitioner and his cousin, Romaneito Carrion, a.k.a. "Moncho". T. 1205. FN3 In his statement to police, petitioner claimed that he and his cousin had been hired by a drug dealer (whom Johvanny was in debt to) to shoot the victim in his kneecaps and steal his jewelry, in order to "embarrass" him. T. 1204-05.

FN3. Citations to "T.___" refer to the transcript non-capital trial.

That night, petitioner and Moncho went to the area of Jay Street in Rochester in search of Johvanny Diaz, asking several people where they could find him. At about 2:00 or 3:00a.m. they saw Johvanny drive up to his house, park his car, and walk up the driveway. Joangel Toro had earlier been approached by the two men regarding Johvanny's whereabouts. Joangel ran to Johvanny in the driveway and informed Johvanny about the inquiries. Changing their plans, petitioner and Moncho first decided to ask Johvanny for an eight-ball of cocaine. Johvanny said that he didn't have it, and continued to walk to a pay phone across Jay Street with

Joangel following. T. 1206-07.

*2 Petitioner and Moncho approached the two men at the pay phone, pulled nylon masks over their faces, and drew their guns. While Johvanny was using the pay phone, petitioner grabbed Joangel, who was frightened, and told him to "calm down". Moncho started talking to Johvanny, and when petitioner lifted his mask away from his face, he heard "the first boom." The first shot hit Johvanny in the face, and Moncho continued to shoot. Petitioner also started shooting, but could not recall how many rounds he fired. The petitioner and Moncho then ran down the street, jumped a fence, and met a friend who drove them to a motel, where they stayed until the next morning. The medical examiner who performed the autopsy testified at trial that Johvanny and Joangel died of multiple gunshot wounds. Johvanny was shot in the forehead, eye, neck, shoulder, and abdomen; Joangel was shot in the hip and back. The two were shot a total of 11 times, T. 872-928, 1207-08, 1231-33.

2. The murder of Peter Holley

On September 22, 1995, petitioner was at his cousin Jimmy Mateo's house when Jimmy told petitioner that a "black guy over near Jones Park" had robbed him of his bicycle and jewelry. Petitioner found his aunt's .12 gauge shotgun and he and Jimmy drove around the neighborhood until they spotted the bicycle standing on its kickstand at the corner of Fulton Street. Nearby, a man was walking toward Lake Avenue, who Jimmy identified as the thief. As the man approached a car and got inside, petitioner pulled up alongside him and shot him in the head through the passenger-side window of his vehicle. Petitioner then drove away and parked on Saratoga Street, where he left the car and the shotgun. When asked by investigators whether petitioner knew he had killed Peter Holley when he shot him, petitioner smiled and replied, "What the fuck do you think when you shoot someone in the head with a shotgun[?]" T. 1213-15, 1233-35, 1377.

B. The Capital Case

1. The hostage incident on Avenue D

The next incident occurred on October 11, 1996, when petitioner and Monica forced their way into an apartment on Avenue D in Rochester, which was occupied by Janette's sister ("Maria"), her boyfriend ("Jose"), and her four-year old daughter ("Leila"). Wielding a .357 caliber handgun, petitioner pointed the gun at Jose, threatening to kill him and everyone else in the house. Monica provided petitioner with a set of handcuffs, which he placed on Jose and ordered the man to lie on the floor. Monica brought sheets from the bedroom and covered the windows. When Leila began to cry, petitioner hit her on the head with the gun. Petitioner then demanded that Maria call her sister at the shelter, and made repeated threats to kill Maria, Jose, and Leila. After multiple attempts, Maria was finally able to get through to Janette at the women's shelter. Petitioner took the phone away and made arrangements to meet with her. R. 14959-60, 14971-75, 15100-107. FN4

FN4. Citations to "R.___" refer to the Record on Appeal of the capital case, which includes trial minutes.

*3 As Janette recalled, "he was telling me he wanted to talk to me because he wanted to fix everything with me." Monica, meanwhile, sat passively while petitioner pleaded with Janette on the telephone. Maria and Leila remained in the apartment, crying and scared. Petitioner confided in Jose that he always wanted to kill Maria for being "in his business," but, he said, "it's not my style to come in homes and kill families. I only do that kind of shit in the street." Over three hours after the incident began, petitioner and Monica left the apartment with no one seriously harmed. Although Jose later called the police, Janette "begged" him not to press charges out of fear of retaliation by petitioner. R. 14928, 14933, 14975-81, 14983-84, 14989-90, 15106-09.

Petitioner, determined not to give up on his pursuit of Janette, attempted multiple times to con-

tact her through Maria or encounter her on the street, and left her numerous messages at the women's shelter about his desire to talk to her and "fix everything." Although petitioner was legally married to Monica, he admitted to Rochester Police Investigator Terrance Sheridan ("Sheridan") that he was deeply in love with Janette and that living with her was the "greatest times of his life." In his quest for Janette, petitioner began "scarching the city trying to find her and," as he later put it, "would hurt anyone that got in his way." R. 14650-51, 14927-33, 15113-14.

2. The kidnapping and murder of Juan Rodriguez-Matos

Juan Rodriguez-Matos ("Juan") was a 20-year old mentally ill individual with a fleeting connection to Janette Sanchez. Petitioner ultimately signed a confession, typed verbatim as he narrated the events to Rochester Police investigators, detailing how his search for his "girlfriend" led to Juan's murder.

On November 2, 1996, petitioner, Monica, and Victor were driving around the city looking for Janette. As they turned onto Smith Street, petitioner saw a "dude that knows a friend of [Janette]." Monica, who was driving, stopped the car on Jay Street, where petitioner got out and approached Juan. Petitioner asked Juan about his friend and where she could be found. "He was acting funny. He was saying that he knew where she lived at but couldn't give me the address. He knew it but didn't want to tell. I pulled out my little .25 semiautomatic gun and ordered him into the car." Petitioner directed Monica to drive them to petitioner's house on Saxton Street. Once inside, petitioner began to inquire about where this friend of his lived. Juan finally acquiesced, stating that he didn't want to be involved or get his friend into trouble. Petitioner handcuffed Juan and walked him down to the basement. According to petitioner, "I had already made up my mind that I was going to kill him."

Petitioner put a dark handkerchief over Juan's eyes and shot him in the head. Juan apparently did

not die immediately, so petitioner put a plastic garbage bag over his head. A few hours later, petitioner checked to confirm that Juan was dead. Petitioner and Monica wrapped the body in some curtains and other items and the three (including Victor) rode to Sherer Street to dispose of the body. Petitioner's confession concluded with the following statement: "Everything [Monica and Victor] did was from out of fear of me and what I would do to them. If Monica is taking the blame for this it's because it's out of fear of me. I think I should get the death penalty for the things I did." R. 14662-70, 14683-88, 14699-702.

*4 Juan's body was later found in an empty lot at the end of Sherer Street near the Rochester Aluminum Smelting Company. Consistent with the confession, a dark-colored bandana was tied over the victim's eyes and, over it, a plastic bag encased his head. The body was wrapped in a blanket and a curtain. Dr. Thomas Smith, Deputy Medical Examiner for Monroe County, ascertained that death had been caused by a single bullet, likely from a small caliber firearm, through the head. In addition to other physical evidence, bloodstains on the basement floor of petitioner's apartment matched Juan Matos's blood type, and that of only six in 10,000 Hispanics. R. 15110-14, 15452-62, 15486-88, 15520-30, 15784-90.

Although petitioner said from the outset that it was he who shot Juan, he also verbally described to investigators how he was able to get Monica and Victor to do his bidding, and at one point said that Monica pulled the trigger: "She is a crazy bitch. Shot the guy." He further claimed that he was at the top of the stairs when Monica killed Juan, but said that he would take the blame for it and would adhere to his original version of the story in the statement he'd give police. Among his various confessions to investigators, petitioner wavered on the details of the killing, at one point saying that he placed the gun in Monica's hand and was "headed for the stairs" when she pulled the trigger. Regardless of which of the confessions is to be credited,

petitioner made the ultimate decision to take the victim into the basement ane execute him. R. 14653-59.

3. The return to Avenue D

On November 6, three days after dumping Juan Matos's body on Sherer Street, petitioner, Monica, and Victor returned to the apartment of Maria Sanchez, anticipating that her sister Janette would turn up. After waiting several hours in the basement of the Avenue D apartment, petitioner grew impatient and decided that they should take over the first floor apartment and wait there. R. 15190-200.

Willie McWilliams ("McWilliams") occupied the first-floor apartment on Avenue D with his girlfriend and five-year-old son. When McWilliams answered a knock on his back door, he was greeted by a large-caliber automatic gun pointed at his head. Petitioner announced that McWilliams was "under arrest." Monica, who was carrying a smaller firearm and Victor, who was not anned, followed petitioner inside. Petitioner hit McWilliams in the head with his weapon and forced him to the floor. instructing Victor to handcuff him. Petitioner then put one foot on the back of McWilliams's neck and pulled his head back to expose his throat to the blade of a knife that had been taken from the kitchen. The first slash was diverted, apparently by a necklace the victim was wearing, so petitioner cut McWilliams a second time from ear to ear. Anticipating that he was soon going to die, McWilliams, still handcuffed, reared up and "head-butted" petitioner. At this point petitioner withdrew and headed toward the living room, but McWilliams pursued him. The handcuffs had eventually came loose, and petitioner fired multiple shots while McWilliams charged at petitioner. Monica, meanwhile, pointed her gun at McWilliams's son, Q.J., but had problems firing the gun due to the gloves she was wearing. McWilliams's girlfriend had since escaped the house to call 911. When petitioner heard the sound of approaching sirens, he fled, leaving Monica to struggle with McWilliams. R. 14269-73, 14277-80, 14351,15191-201.

*5 Despite being shot, McWilliams succeeded in knocking over Monica, who turned the gun on herself, lamenting that she and her companions "hit the wrong apartment." She asked McWilliams to kill her: "You already took my husband out," (petitioner was ultimately found to have suffered a minor gunshot wound in the exchange). McWilliams, who was seriously wounded and still thinking he was going to die, refused and insisted that she remain alive to bear witness. FN5 Monica handed the gun over to five-year-old Q.J., asking the child to shoot her, and McWilliams again intervened. Moments later, police arrived and apprehended Monica, R. 14280-84, 14383, 15800.

FN5. In addition to having his throat cut, McWilliams sustained stab wounds to his jaw, gunshot wounds to his shoulder, back, and foot, and his teeth were knocked out during the skirmish. R. 14352-56.

C. Petitioner's Arrest and Interrogation

After questioning Monica, Rochester police contacted security personnel at Marine Midland bank and asked to be notified if petitioner showed up. At approximately 4:45p.m., petitioner arrived in the passenger seat of a car as it drove up to the teller window at the Lyell Avenue branch. The vehicle was driven by his mother, and in the back seat were Victor and two other men variously described as half-brothers or cousins. Rochester police convened at the bank and ordered everyone out of the car. As petitioner complied, a cream-colored pistol fell from his waist. The .380 caliber semi-automatic gun was later found to have fired three of the builets found at McWilliams home on Avenue D.R. 14519-22, 14526-30, 14549-55, 14562-64, 14578, 14580-85, 14825, 15256-57, 15293, 15738-39.

Petitioner was taken to the Rochester Public Safety Building to await investigators. Before any investigators arrived, he announced to the officer guarding him, "Give me the D.A. and I'll tell him everything. I only want to talk with the head man." Investigator Sheridan and Sergeant John Gropp ("Gropp") walked into the interview room at ap-

proximately 5:45pm and introduced themselves. Petitioner initially demanded that his family be released before he would discuss any of the crimes. Sheridan responded that he would first have to know more about what crimes petitioner was offering to discuss. Sheridan then read petitioner his Miranda rights, which petitioner waived. R. 14635-42, 14820-21, 15026.

After approximately 45 minutes, petitioner offered to discuss Johvanny, a name that Sheridan recognized. Sheridan knew that a man named Joangel Toro was killed along with Johvanny Diaz, so he asked petitioner whether he was responsible for killing Johvanny. Petitioner answered "yes," and said that he would talk about it, along with "some others" but again insisted that his family be released. Sheridan ignored petitioner's request, and continued to question him regarding the other homicides. Petitioner eventually told Sheridan that he killed a man near a milk plant on Lake Avenue, and another person on Sherer Street. Although petitioner still wanted "something for his family in return," for this information, investigators promised him nothing, R. 14821-24.

*6 Sheridan noticed that petitioner had a limp and was wearing a white gauze bandage on his leg. Petitioner attributed the injury to the incident at the Avenue D apartment earlier that morning, but did not describe the event in detail. Sheridan asked if petitioner wanted to have the wound treated at the hospital, but petitioner denied the offer and stated that he "want[ed] to get this cleared up." R. 14643-47.

Sheridan and Gropp left the interview room for about thirty minutes, and returned to inform petitioner that everyone who was arrested at Marine Midland bank faced charges for the gun that was recovered at the scene of the arrest. Petitioner insisted that the others were not responsible, the gun was his alone, and repeated that he wanted his family released. Sheridan then pointed out that Monica had been arrested at the apartment of Willie McWilliams earlier in the day and was facing very serious

charges and "wasn't going anywhere." Petitioner then became "very upset" after learning the police had reason to believe that Victor was also involved in the incident. He angrily asserted that only petitioner and Monica entered the apartment armed with guns, and that Victor merely waited outside until after the shooting, at which point he "came in only to aid [petitioner]." Sheridan advised petitioner that although Monica and Victor were not going to be released, the rest of his family would not be charged with possession of the gun: "[W]e have met your demands, so to speak; start at the beginning and tell us those homicides." Petitioner began to discuss the four murders. R. 14826-28, 14830-31.

Petitioner discussed the killing of Johvanny Diaz, and related that he and another man, whom he eventually acknowledged as his cousin Moncho, were hired by a drug dealer to shoot Johvanny in the knees and take his money. Johvanny was in debt to the drug dealer, who contracted petitioner and Moncho to "embarrass" Johvanny, but not kill him. Petitioner acknowledged that the pair "changed the plan a little bit." After Johvanny refused to sell them cocaine, petitioner and Moncho confronted Johvanny and his companion, Joangel, at a pay phone. Petitioner grew frustrated trying to breathe behind the nylon mask so he pulled it off. As he did so, Moncho shot Johvanny in the face. When Joangel looked toward petitioner, he started shooting too. "The booms kept coming" and soon both victims were left dead or dying from multiple gunshot wounds. R. 14831-36, 14851-53.

Petitioner then turned to the killing of Peter Holley, who was shot near a milk plant. The murder occurred after Jimmy Mateo was robbed of a bicycle and gold chain "by a black dude who had a knife." Petitioner thereupon retrieved his aunt's .12 gauge shotgun and he and Jimmy drove around the neighborhood until they spotted the bicycle on a street corner. Nearby, a man was starting to get into a car. Jimmy identified the thief, and petitioner told the investigator that "I shot him in the head." R.

14836-37, 14855-56.

*7 Next petitioner gruesomely described the kidnapping and murder of Juan Rodriguez-Matos to investigators, proclaiming that he "wanted the death penalty" for the crime because "I'm a king and I can't do a hundred years in jail." Before he would consent to signing the typed version of any of the confessions, he insisted on calling his mother to confirm that she had been released. Investigators made arrangements for that phone call, and the confessions were subsequently typed and signed. R. 14645-76, 14838, 14848-49.

Finally, at approximately 1:35a.m., Gropp questioned petitioner and obtained similarly explicit confessions about the two incidents at Avenue D, including the one earlier that day involving McWilliams. Aside from noting his leg injury was sustained while grappling with McWilliams, ("I felt something hit me in the right leg. I don't know if Monica shot or what") the only thing that his confession added to McWilliams testimony was the acknowledgment that this hostage-taking was the product of his desire to "find my girlfriend... or find out if they could get here there." He professed, "All this shit over the love of a woman." R. 14849, 15189-200, 15211.

D. Petitioner's Appeals

The capital case and attendant convictions were appealed directly to the New York Court of Appeals, which affirmed the conviction but reversed the sentence of death. FN6 People v. Mateo. 2 People v. Mateo, 2 N.Y.3d 383, 779 N.Y.S.2d 399, 811 N.E.2d 1053, cert. denied 542 U.S. 946, 124 S.Ct. 2929, 159 L.Ed.2d 828 (2004); see Appx. E. Petitioner was resentenced on his first degree murder conviction on August 18, 2004, to life imprisonment without parole. See Resp't Answer ¶ 7. (Docket No. 4). On September 9, 2004, petitioner's attorney filed a Notice of Appeal from the judgment of conviction and the sentence, and that appeal is still pending in state court. See Resp't Answer ¶ 9; Appx. G. Despite the inclusive language in petitioner's Notice, further appeal lies only from the re-sentence and not from

any alleged errors committed at or before trial. See, e.g. People v. Ryder, 239 A.D.2d 364, 657 N.Y.S.2d 998 (2d Dept.1997) Iv. denied, 90 N.Y.2d 910, 663 N.Y.S.2d 522, 686 N.E.2d 234. As such, petitioner's conviction is final for purposes of habeas review, and the issues raised in the instant petition are unrelated to the re-sentencing.

FN6. Citing its previous decisions in Hynes v. Tomei, 92 N.Y.2d 613, 684 N.Y.S.2d 177, 706 N.E.2d 1201 (1998) and People v. Harris, 98 N.Y.2d 452, 749 N.Y.S.2d 766, 779 N.E.2d 705 (2002) holding New York's death penalty statute unconstitutional, the Court of Appeals struck the death notice and limited petitioner's sentence to life without parole upon re-conviction.

Petitioner's non-capital case was appealed to the Appellate Division, Fourth Department, which affirmed all convictions. *People v. Mateo*, 11 A.D.3d 984, 782 N.Y.S.2d 233 (4th Dept.2004); Appx. L. Leave to appeal this decision was denied by the New York Court of Appeals. 3 N.Y.3d 758, 788 N.Y.S.2d 675, 821 N.E.2d 980 (2004).

III. Discussion

A. General Principles Applicable to Federal Habeas Review

1. Standard of Review

To prevail under 28 U.S.C. § 2254, as amended in 1996, a petitioner seeking federal review of his conviction must demonstrate that the state court's adjudication of his federal constitutional claim resulted in a decision that was contrary to or involved an unreasonable application of clearly established Supreme Court precedent, or resulted in a decision that was based on an unreasonable factual determination in light of the evidence presented in state court. See 28 U.S.C. § 2254(d)(1), (2); Williams' v. Taylor, 529 U.S. 362, 375-76, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000).

*8 A state court decision is based on an "unreasonable application" of Supreme Court precedent if it correctly identified the governing legal rule, but applied it in an unreasonable manner to the facts of a particular case. Williams, 529 U.S. at 413. The inquiry for a federal habeas court is not whether the state court's application of the governing law was erroneous or incorrect, but rather whether it was "objectively unreasonable." See id. at 408-10; see also Eze v. Seńkowski, 321 F.3d 110. 125 (2d Cir.2003). Under the Anti-Terrorism and Effective Death Penalty Act ("ABDPA"), "a determination of a factual issue made by a State court shall be presumed to be correct. The [petitioner] shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1); see also Parsad v. Greiner, 337 F.3d 175, 181 (2d Cir.) ("The presumption of correctness is particularly important when reviewing the trial court's assessment of witness credibility."), cert. denied sub nom. Parsad v. Fischer, 540 U.S. 1091, 124 S.Ct. 962, 157 L.Ed.2d 798 (2003).

2. Exhaustion Requirement and Procedural Bar

'An application for a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court shall not be granted unless it appears that ... the applicant has exhausted the remedies available in the courts of the State...." 28 U.S.C. § 2254(b)(1)(A); see, e.g., O'Sullivan v. Boerckel, 526 U.S. 838, 843-44, 119 S.Ct. 1728, 144 L.Ed.2d 1 (1999); accord, e.g., Bossett v. Walker, 41 F.3d 825, 828 (2d Cir.1994), cert. denied, 514 U.S. 1054, 115 S.Ct. 1436, 131 L.Ed.2d 316 (1995) . "The exhaustion requirement is not satisfied unless the federal claim has been 'fairly presented' to the state courts." Daye v. Attorney General, 696 F.2d 186, 191 (2d Cir.1982) (en banc), cert. denied, 464 U.S. 1048, 104 S.Ct. 723, 79 L.Ed.2d 184 (1984). "The exhaustion requirement is principally designed to protect the state courts' role in the enforcement of federal law and prevent disruption of state judicial proceedings, and is not satisfied unless the federal claim has been 'fairly presented' to the state courts." Jimenez v. Walker,

458 F.3d 130, 148-149 (2d Cir.2006) (internal citations and quotation marks omitted).

"For exhaustion purposes, a federal habeas court need not require that a federal claim be presented to a state court if it is clear that the state court would hold the claim procedurally barred." Reyes v. Keane, 118 F.3d 136, 139 (2d Cir.1997) (quotations omitted). "In such a case, a petitioner no longer has 'remedies available in the courts of the State' within the meaning of 28 U.S.C. § 2254(b)." Grey v. Hoke, 933 F.2d 117, 120 (2d Cir.1991). Consequently, such procedurally barred claims are "deemed exhausted" by the federal courts. E.g., Grey, 933 F.2d at 120-21; Reyes v. Keane, 118 F.3d at 139.

For a procedurally defaulted claim to be heard on habeas review, "the petitioner must show cause for the default and prejudice, or demonstrate that failure to consider the claim will result in a miscarriage of justice (i.e., the petitioner is actually innocent)." Aparicio v. Artuz, 269 F.3d 78, 90 (2d Cir.2001) (citing Coleman v. Thompson, 501 U.S. 722, 748-50, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991)).

B. Merits of the Petition

1. Involuntary Confession

*9 Petitioner claims, as to both cases, that his confessions were involuntary, induced by police promises that his family would be released and charges against his brother would be "limited to minor offenses". Pet. ¶ 12(a). (Docket No. 1). This is his sole claim for habeas relief. He raised the issue in his direct appeal from the capital conviction. In that case, the Court of Appeals determined: "On this record, there is no evidence that defendant's will was overborne or his capacity for self-determination impaired, and every indication that he spontaneously, aggressively and voluntarily confessed to suit his own purposes." People v. Mateo, 2 N.Y.3d 383, 416, 779 N.Y.S.2d 399, 811 N.E.2d 1053 (2004); Appx. E.

Respondent contends that the voluntariness issue was not raised on the non-capital appeal and is thus unexhausted and procedurally defaulted. In a letter to the Appellate Division, petitioner's appellate counsel requested that the court preserve the issue for the purpose of future federal litigation, but acknowledged he did not brief the claim on appeal. FN7 See Petr Reply, Bx. A. (Docket No. 7). The Appellate Division held that the issue was not timely raised, and that in any event, was without merit. People v. Mateo, 11 A.D.3d 984, 782 N.Y.S.2d 233 (4th Dept.2004). The claim was also not raised to the New York Court of Appeals, see, Appx. M, and the Court agrees that the claim is therefore unexhausted.

FN7. In his letter, appellate counsel explained that he did not brief the voluntariness issue because the Court of Appeals decision would require the Appellate Division to reject it. Nevertheless, petitioner wished to preserve his right to seek federal habeas relief on the voluntariness of the confession. Pet'r Reply, Ex. A.

With respect to the non-capital conviction, petitioner's unexhausted claim is procedurally defaulted because petitioner has already used the one direct appeal to which he is entitled under New York state law, and if he were to raise the claim in a N.Y.Crim. Proc. Law § 440.10 motion to vacate the judgment, it would be dismissed because it should have been raised on direct appeal. See N.Y.Crim. Proc. Law § 440.10(2)(c); N.Y. Court Rules § 500.10(a); Grey v. Hoke, 933 F.2d 117, 119-21 (2d Cir.1991). Petitioner has not demonstrated cause and prejudice to excuse the default, or that a fundamental miscarriage of justice would occur should this habeas court decline to review the claim. Nevertheless, petitioner is still entitled to a merits review of his voluntariness claim pertaining to his capital case because it has been properly exhausted, and, in any event, the claim arises out of a single interrogation and evidentiary hearing, and requires the same analysis regardless of which conviction it

attaches to.

The "ultimate issue of voluntariness fof a confession] is a legal question requiring independent federal determination." Nelson v. Walker, 121 F.3d 828, 833 (2d Cir.1997) (quoting Arizona v. Fulminanie, 499 U.S. 279, 287, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991)); see also Nova v. Bartlett, 211 F.3d 705, 707 (2d Cir.2000). " 'No single criterion controls whether an accused's confession is voluntary: whether a confession was obtained by coercion is determined only after careful evaluation of the totality of the surrounding circumstances." " Nelson, 121 F.3d at 833 (quoting Green v. Scully, 850 F.2d 894, 901 (2d Cir.), cert. denied, 488 U.S. 945, 109 S.Ct. 374, 102 L.Ed.2d 363 (1988)). Factors to be considered include the accused's experience and education; the conditions of the interrogation; and the conduct of law enforcement officials, notably, whether there was physical abuse, the period of restraint in handcuffs, and use of nsvchologically coercive tactics. Id. (citing Green, 850 F.2d at 901). " '[S]ubsidiary questions, such as the length and circumstances of [an] interrogation," or whether " 'the police engaged in the intimidation tactics alleged by the defendant,' are entitled to the presumption of correctness." Id. (quoting Miller v. Fento, 474 U.S. 104, 112, 117, 106 S.Ct. 445, 88 L.Ed.2d 405 (1985)); see also Towndrow v. Kelly, 2000 WL 33743385, at *4 (N.D.N.Y. Dec.20, 2000) (factual findings relevant to the voluntariness of a habeas petitioner's confession made by the state court are entitled to the presumption of correctness, and a petitioner must rebut this presumption by clear and convincing evidence) (citing 28 U.S.C. § 2254(e)(1)).

*10 A full evidentiary hearing was held before the trial court concerning the issue of voluntariness. R. 8576-9055. Following that hearing, the court made the following determinations:

[D]efendant was properly advised of his Miranda warnings and made a knowing, voluntary and intelligent waiver of those warnings before speaking with the officers. During the ensuing hours of

interviews, the defendant made numerous inculpatory, spontaneous, oral and written statements to the police concerning the events under investigation. There is no evidence that the police in any way coerced statements made by the defendant, nor induced them by any threats or promises, implied or otherwise, concerning either the charges in this case against the defendant or charges, real or imagined, against his family. The People met their burden in establishing the voluntariness of the statements of the defendant.

R. 17307.

On appeal, the Court of Appeals analyzed the issue in light of the Supreme Court's decisions in Arizona v. Fullmante, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991) and Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986) FN, and found ample evidentiary support for the hearing court's factual findings: "A review of the circumstances here, moreover, shows that the [petitioner's] confession was voluntary, and that coercive police activity did not occur." Mateo, 2 N.Y.3d at 414, 779 N.Y.S.2d 399, 811 N.E.2d 1053. This Court agrees.

FN8. Fulminante requires that the voluntariness of a confession must be reviewed in totality of the circumstances. 499 U.S. at 285-86. In Connelly, the Supreme Court held that coercive police activity if a necessary predicate to the finding that a confession is not voluntary within the meaning of the Due Process Clause. 479 U.S. at 167

Petitioner initially expressed his willingness to discuss the crimes when he demanded to speak "with the head man," referring to the District Attorney. A few minutes later, petitioner shouted to an investigator walking down the hall to send in the detective handling his case while he still felt like talking. As a result, investigators arrived and read petitioner his *Miranda* rights, which he waived. Although he insisted that his family be released as

precondition to discussing the homicides, petitioner immediately began talking, starting with Johvanny. Petitioner repeated again that he wanted his family released, but went on to admit that he killed "a black guy near the milk plant" [Peter Holley] and then acknowledged that he had also killed Juan Matos. The record indicates that at no time did the investigators promise that Victor or petitioner's other family members would receive leniency or be released. In fact, Sheridan specifically indicated to petitioner that Victor would not be released due to the nature of the crimes he was thought to be involved in. After petitioner submitted that the gun recovered at the scene of the arrest belonged to him. Sheridan informed petitioner that his relatives (those arrested at Marine Midland bank) had been released. Contrary to petitioner's assertion, this does not amount to a quid pro quo and it does not render involuntary petitioner's subsequent elaboration about the murders.

"As is obvious from the exchanges, [petitioner] believed that he was in a position to influence the release of his family, acting under a self-created impulse to tell the police "everything" in order to achieve his own objective." Mateo, 2 N.Y.3d at 415, 779 N.Y.S.2d 399, 811 N.E.2d 1053, Petitioner's proclamation of being "a king" and his desire for the death penalty supports the state court's conclusion that he freely and vociferously rendered his confessions. Even if the Court were to believe that investigators allusively promised petitioner anything, such conduct, standing alone, does not render a confession involuntary. See Green v. Scully, 850 F.2d 894, 901 (2d Cir.1988) ("[T]he presence of a direct or implied promise of help or leniency alone has not barred the admission of a confession where the totality of the circumstances indicates it was the product of a free and independent decision."); see also Connelly, 479 U.S. at 164 n. 2 ("Even where there is causal connection between police misconduct and a defendant's confession, it does not automatically follow that there has been a violation of the Due Process Clause.")

*11 Moreover, petitioner does not allege physical abuse or misconduct by the investigators. He was offered food, cigarettes, water, and medical treatment. He was allowed meetings with Monica and Victor, and was permitted a phone call to his mother as per his requests to the police. It is clear from the record that the investigators' conduct was not coercive and did not suppress petitioner's free will. The New York Court of Appeals thus did not unreasonably apply or render a decision contrary to Fulminante and Connelly. Because habeas relief does not lie for this ground, the petition for habeas corpus is denied and the action is dismissed.

IV. Concinsion

For the reasons stated above, Angel Mateo's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is denied, and the petition is dismissed. Because the petitioner has failed to make a "substantial showing of a denial of a constitutional right," 28 U.S.C. § 2253(c)(2), the Court declines to issue a certificate of appealability. See, e.g. Lucidore v. New York State Div. of Parole, 209 F.3d 107, 111-113 (2d Cir.2000). The Court hereby certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this judgment would not be taken in good faith and therefore denies leave to appeal as a poor person. Coppedge v. United States, 369 U.S. 438, 82 S.Ct. 917, 8 L.Ed.2d 21 (1962).

SO ORDERED.

W.D.N.Y.,2009. Mateo v. Artus Slip Copy, 2009 WL 3273878 (W.D.N.Y.)



11 A.D.3d 984, 782 N.Y.S.2d 233, 2004 N.Y. Slip Op. 06957 (Cite as: 11 A.D.3d 984, 782 N.Y.S.2d 233)

Page 1

H

Supreme Court, Appellate Division, Fourth Department, New York.

PEOPLE of the State of New York, Plaintiff-Respondent,

Angel MATEO, Defendant-Appellant.

Oct. 1, 2004.

*984 Appeal from a judgment of the Monroe County Court (John J. Connell, J.), rendered November 8, 1999. The judgment convicted defendant, upon a jury verdict, of murder in the second degree (five counts).

John E. Tyo, Shortsville, for defendant-appellant.

Michael C. Green, District Attorney, Rochester (Wendy Evans Lehmann of counsel), for plaintiffrespondent.

MEMORANDUM:

Defendant appeals from a judgment convicting him following a jury trial of five counts of murder in the second degree (Penal Law § 125.25[1], [3]). Contrary to the contention of defendant, County Court did not abuse its discretion in denying his severance motion. "[D]efendant failed to meet his burden of establishing that he would be 'unduly and genuinely *985 prejudiced by the joint trial of the [unrelated murder] charges' " (People v. Lovett, 303 A.D.2d 952, 952, 755 N.Y.S.2d 906, Iv. denied 100 N.Y.2d 584, 764 N.Y.S.2d 394, 796 N.E.2d 486, quoting People v. Brown, 254 A.D.2d 781, 782, 680 N.Y.S.2d 328, Iv. denied 92 N.Y.2d 1029, 684 N.Y.S.2d 494, 707 N.E.2d 449). Defendant failed to preserve for our review his further contention that the court's instructions concerning the separate counts were inadequate (see CPL 470.05[2]) and, in any event, that contention tacks merit (see generally People v. Canty, 60 N.Y.2d 830, 831-832, 469 N.Y.S.2d 693, 457 N.E.2d 800). Even assuming, arguendo, that the challenge by defendant to the voluntariness of his confession was timely raised, we nevertheless conclude that it is without merit (see generally People v. Mateo, 2 N.Y.3d 383, 413-414, 779 N.Y.S.2d 399, 811 N.E.2d 1053, cert. denied - U.S. ---, 124 S.Ct. 2929, 159 L.Ed.2d 828). Finally, by challenging the voluntariness of the confession, defendant opened the door to the admission of the full confession (see id. at 416-417, 779 N.Y.S.2d 399, 811 N.E.2d 1053).

It is hereby ORDERED that the judgment so appealed from be and the same hereby is unanimously affirmed.

PINE, J.P., SCUDDER, KEHOE, MARTOCHE, and LAWTON, JJ., concur.

N.Y.A.D. 4 Dept. 2004. People v. Mateo 11 A.D.3d 984, 782 N.Y.S.2d 233, 2004 N.Y. Slip Op. 06957

Page i

Not Reported in N.Y.S.2d, 1999 WL 33313140 (N.Y.Co.Ct.), 1999 N.Y. Slip Op. 40005(U). (Cite as: 1999 WL 33313140 (N.Y.Co.Ct.))

NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK COUNTY COURT
COUNTY OF MONROE
THE PEOPLE OF THE STATE OF NEW YORK

v.
JOHN OWENS, Defendant.

Ind. #547/99, Ind. #414/99

DATED: November 22, 1999, Rochester, New York

On Behalf of the People MICHAEL GREEN, ESQ. Assistant District Attorney

On Behalf of the Defendant: MICHAEL M. MUR-RAY, ESQ. PETER PULLANO, ESQ. Capital Defenders for the Defendant

EGAN, J.:

*1 This is a potential death penalty ease. In two separate indictments, Defendant John Owens is charged with two counts of Murder in the First Degree, three counts of Murder in the Second Degree, and three counts of Rape in the First Degree. The District Attorney's office has not yet decided whether to file a Notice of Intent to Seek the Death Penalty pursuant to CPL §250.40.

The People seek an Order from the Court pursuant to CPL §200.20(4) consolidating Indictment No. 547/99 and Indictment No. 414/99. The second and fourth counts of Indictment No. 547/99, and the sole count in Indictment No. 414/99 allege that the Defendant caused the death of Sherry Tuthill by striking, choking and/or asphyxiating her sometime between May 30 and June 1, 1999, in violation of Penal Code Sections 125.27(1)(a)(vii) and (b),

125.25(1) and 125.25(2), respectively.

The offenses in the indictments are joinable under CPL §200.20 (2)(a) since they are based upon the same act or criminal transaction as defined in CPL §40.10. Id. In the absence of "a showing of good cause to the contrary," this Court must order consolidation and treat them as a single indictment for trial purposes. CPL §200.20(5).

Defendant has failed to show good eause why the indictments should be tried separately. CPL §200.20 (3). Defendant has not established that there is substantially more proof against him on one set of eharges, and that a jury likely would be unable to consider separately the proof as it relates to each offense. CPL §200.20 (3)(a); People v. Rogers, 245 AD 2d 1041 (4th Dept. 1997). Nor has the Defendant shown that he has "both important testimony to give concerning one [offense] and a genuine need to refrain from testifying on the other." CPL §200.20 (3) (b); People v Lane, 56 NY2d i, 5 (1982).

The People's motion to consolidate is hereby granted, without prejudice to Defendant's right to move for separate trial of counts at a later date.

This shall constitute the Opinion, Decision and Order of the Court.

ZYNY

People v. Owens Not Reported in N.Y.S.2d, 1999 WL 33313140 (N.Y.Co.Ct.), 1999 N.Y. Slip Op. 40006(U)

182 Misc.2d 828, 701 N.Y.S.2d 604, 1999 N.Y. Slip Op. 99574 (Cite as: 182 Misc.2d 828, 701 N.Y.S.2d 604)

H

County Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

John OWENS, Defendant.

Nov. 22, 1999.

Defendant, who was charged with two counts each of first-degree and second-degree murder, and three counts of first-degree rape, moved to have the records of any jail visits sealed and their confidentiality maintained. The County Court, Monroe County, David D. Egan, J., held that county court lacked jurisdiction to grant requested relief.

Motion denied.

West Headnotes

[1] Costs 102 ©== 285

102 Costs

102XIV In Criminal Prosecutions

102k285 k, Constitutional and Statutory Provisions. Most Cited Cases

Intent of statute permitting a defendant in a capital ease to apply ex parte for the court's authorization of county funding for the cost of investigative, expert or other services is to prevent the disclosure of a defendant's trial strategy. McKinney's Judiciary Law § 35-b, subd. 8.

[2] Records 326 €==32

326 Records

326II Public Access

326II(A) In General

326k32 k. Court Records. Most Cited

Cases

As court of limited jurisdiction, county court lacked jurisdiction to seal records of any jail visits with defendant charged with capital crimes. McKinney's Const. Art. 6, § 11.

[3] Mandamus 250 € 141

250 Mandamus

250111 Jurisdiction, Proceedings, and Relief 250k141 k. Jurisdiction and Authority. Most Cited Cases

Prohibition 314 €---16

314 Prohibition

314II Procedure

314k16 k. Jurisdiction or Authority to Issue. Most Cited Cases

Only a State Supreme Court, through an article 78 proceeding, may issue a mandamus or a prohibition directing the procedures of a local law enforcement agency. McKinney's CPLR 7801 et seq.

**605 *828 Michael M. Murray, New York City, and Peter Pullano, Roehester, for defendant.

Howard R. Relin, District Attorney of Monroe County (Michael Green of counsel), for plaintiff.

DAVID D. EGAN, J.

This is a potential death penalty case. Defendant John Owens is charged with two counts of Murder in the First Degree, two counts of Murder in the Second Degree, and three counts of Rape in the First Degree. The District Attorney's office has not *829 yet decided whether to file a Notice of Intent To Seek The Death Penalty pursuant to CPL § 250.40. With no bail request made to date, Defendant is currently being held in the Monroe County Jail awaiting his trial.

Under the veil of heightened due process that Defendant alleges should be afforded all capital murder eases, Defendant seeks to have the records of any jail visits "sealed and their eonfidentiality maintained." Specifically the defense is concerned that the prosecution will learn of the names of Defendant's professional visitors, and the lengths of their visits. Defendant argues that the District At-

182 Misc.2d 828, 701 N.Y.S.2d 604, 190° N.Y. Slip Op. 99204 (Cite as: 182 Misc.2d 828, 701 N.Y.S.2d ou4)

torney's access to such records would give the prosecution a "clear window into defense strategy and preparations."

[1] In support of his claim, Defendant cites People v. Irwin and People v. Banker, County Ct., Sullivan County, Mar. 11, 1999, LaBuda, J. (see, Spencer, Rare Motion to Close Hearings in Death Penalty Pretrial Fails, NYLI, Mar. 15, 1999, at 1, col. 4.), wherein the Sullivan County Court granted a similar request for such non-disclosure finding that it was "consistent with the confidentiality mandated" by Judiciary Law § 35-b(8). Judiciary Law § 35-b(8) permits a defendant in a capital case to apply ex parte for the court's authorization of county funding for the cost of "investigative, expert or other" services. Id. The clear intent of the statute is to prevent the disclosure of a defendant's trial strategy by ensuring that the court's determination of whether the proposed investigative and expert expenditures are reasonably necessary to the defense are conducted ex parte.

[2][3] This Court lacks jurisdiction to grant such relief. County Court is a court of limited jurisdiction created by Article VI, Section 11 of our state constitution. Only a State Supreme Court through a CPLR Article 78 proceeding may issue a mandamus or a prohibition directing the procedures of a local law enforcement agency. People v. Santiago, 181 Misc.2d 641, 694 N.Y.S.2d 901 (Mon. Cty. Ct. [Bristol, J.] 1999); cf. Matter of Hennessy, 67 A.D.2d 1089, 1090, 415 N.Y.S.2d 163 (4th Dept.1979).

Even if this Court was vested with such authority, it is not convinced that the disclosure of the jail logs would give the prosecution a tactical advantage. Unlike a Judiciary Law § 35-b(8) proceeding where a capital defendant is compelled to justify his need for funding for expert and investigative services, the disclosure of his jail visitors' names does not hold the potential to reveal privileged communications. In fact under CPL § 240.30(2) the Defendant ultimately will be required to *830 disclose to the prosecution the names of his experts. Other

safeguards are in place, including sanctions and remedies at trial, to ensure that the prosecution does not misuse such information in the interim. People v. Hall, 179 Misc.2d 488, 496, 686 N.Y.S.2d 551 (Sup.Ct. Monroe Co. [Mark, J.] 1998), citing People v. Riggins, 178 Misc.2d 12, 20-23, 678 N.Y.S.2d 469 (Monroe Cty.Ct.1998); **606 People v. Warmus, 148 Misc.2d 374, 380-84, 561 N.Y.S.2d 111 (Westchester Cty.Ct.1990).

The Defendant's motion is therefore denied.

N.Y.Co.Ct.,1999. People v. Owens 182 Misc.2d 828, 701 N.Y.S.2d 604, 1999 N.Y. Slip Op. 99574

Westlaw.

Page 1

182 Misc.2d 794, 701 N.Y.S.2d 602, 1999 N.Y. Süp Op. 99573 (Cite as: 182 Misc.2d 794, 701 N.Y.S.2d 602)

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County Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

John OWENS, Defendant.

Nov. 22, 1999.

Defendant in potential death penalty ease sought order allowing him to apply ex parte and under seal for judicial subpoenas duces tecum directed to public ageneies, through which defendant sought to obtain information for use both in dissuading prosecutor from seeking death penalty, and to prepare for mitigation in sentencing phase in event he was found guilty. The Monroe County Court, David D. Egan, J., held that defendant could not apply ex parte for such subpoenas.

Motion denied.

West Headnotes

[1] Witnesses 410 €---16

410 Witnesses

410I In General

410k16 k. Subpoena Duces Tecum. Most Cited Cases

There is a general presumption that ex parte applications for judicial subpoenas duces tecum are improper. McKinney's CPLR 2307; N.Y.Ct.Rules, § 100.3(B)(6).

[2] Costs 102 € 302

102 Costs

102XIV In Criminal Prosecutions

102k301.I Security for Payment; Proceedings in Forma Pauperis

102k302 k. In General, Most Cited Cases

Costs 102 €==302,2(2)

102 Costs

102XIV In Criminal Prosecutions

102k301.1 Security for Payment; Proceedings in Forma Pauperis

102k302.2 Production of Witnesses or

Evidence

102k302.2(2) k. Expert Witnesses or

Assistance in General. Most Cited Cases

Costs 102 € 302,3

102 Costs

102XIV In Criminal Prosecutions

102k301.1 Security for Payment; Proceedings in Forma Pauperis

102k302.3 k. Investigative Assistance. Most Cited Cases

Clear intent of statute authorizing defendant in a capital case to apply ex parte for the court's authorization of county funding for the cost of investigative, expert, or other services is to prevent the disclosure of a defendant's trial strategy by ensuring that court's determination of whether the proposed investigative and expert expenditures are reasonably necessary to the defense is conducted ex parte. McKinney's Judiciary Law § 35-b, subd. 8.

[3] Costs 102 €==302.2(2)

102 Costs

102XIV In Criminal Prosecutions

102k301.1 Security for Payment; Proceedings in Forma Pauperis

102k302.2 Production of Witnesses or

Evidence

102k302,2(2) k. Expert Witnesses or

Assistance in General. Most Cited Cases

Where the assistance of an expert is needed to prepare a defense, an indigent defendant has a constitutional right to the services of that expert at state expense, and a defendant's showing of need is to be made ex parte.

[4] Witnesses 410 €-16

410 Witnesses

182 wisc.2d 794, 701 N.Y.S.2d 602, 1999 N.Y. Sup Op. 99573 (Cite as: 182 Misc.2d 794, 701 N.Y.5.2d 402)

410I In General

410k16 k, Subpoena Duces Tecum. Most

Defendant in potential death penalty case could not apply ex parte and under seal for judicial subpoenas duces tecum directed to public agencies, through which defendant sought to obtain information for use both in dissuading prosecutor from seeking death penalty and to prepare for mitigation in sentencing phase in event he was found guilty. McKinney's CPL § 610.20, subd. 3; McKinney's CPLR 2307.

**602*794 Michael M. Murray, New York City, and Peter Pullano, Rochester, for Defendant.

Howard R. Relin, District Attorney of Mouroe County (Michael Green of counsel), for plaintiff.

DAVID D. EGAN, J.

This is a potential death penalty case. Defendant John Owens is charged with two counts of Mnrder in the First Degree, two counts of Murder in the Second Degree, and three counts of *795 Rape in the First Degree. The District Attorney's Office has not yet decided whether to file a Notice of Intent To Seck The Death Penalty pursuant to CPL § 250.40.

Defendant requests an Order from this Court allowing him to apply ex parte and under seal for judicial subpoenas duces tecum directed to public agencies. The defense intends to use the subpoenaed information both to dissuade the District Attorney from seeking the death penalty and to prepare for mitigation in the senteneing phase of trial in the event defendant is found guilty. Defendant argues that to put the prosecution on notice concerning the documents it seeks to subpoena will unduly prejudice the defense by revealing its "strategy and work-product."

The People maintain that such ex parte applications for judicial subpoenas duces **603 tecum contravene CPL § 610.20(3) and CPLR § 2307. CPL § 610.20(3) provides in pertinent part: "[a]n attorney for a defendant may not issue a subpoena duces tecum of the court directed to any department, bureau or agency of the state or of a political subdivision thereof. Such a subpoena duces tecum may be issued in behalf of a defendant upon order of a court pursuant to [CPLR § 2307]" CPL § 610.20(3) (emphasis added).

CPLR § 2307 provides that "unless the court orders otherwise, a motion for such subpoena shall be made on at least one day's notice to the library, department, bureau or officer having custody of the book, document or other thing and the adverse party". CPLR § 2307 (emphasis added).

Read together it is not clear whether these statutes simply authorize a court to amend the timing of a defendant's notice to an adverse party and/or public agency [People v. Hall, 179 Misc.2d 488, 496, n. 13, 686 N.Y.S.2d 551 (Sup.Ct. Monroe Co. [Mark, J.] 1998); People v. Santiago, unpublished, slip op. at p. 3 (Mon. Cty. Ct. [Bristol, J.] July 8, 1999)] or allow the court to eliminate the notice requirement altogether. People v. Van Dyne, 175 Misc.2d 558, 559, 669 N.Y.S.2d 199 (Mon.Cty.Ct. [Marks, J.] 1998). The courts have dealt with this inherent ambiguity differently. Id.

[1] Assuming this Court has the authority to waive a defendant's notice requirement under CPI. § 610.20(3) and CPI.R § 2307, this Court recognizes that there is a general presumption that exparte applications are improper. 22 NYCRR 100.3[B][6]; Kawasaki v. Kasting, 124 A.D.2d 1034, 508 N.Y.S.2d 762 (4th Dcpt.1986); People v. Van Dyne, supra. There also is a split of authority on whether a defendant must adhere to the notice requirement in a capital case.

[2][3] *796 Defendant not surprisingly relies on People v. Mateo, 173 Mise.2d 70, 660 N.Y.S.2d 672 (Mon.Cty.Ct. [Marks, J.] 1998), People v. Van Dyne, supra, and People v. Santiago, supra. In People v. Mateo, supra, at 71, 660 N.Y.S.2d 672, the court noted the practice of notifying the prosec-

182 Misc.2d 794, 701 N.Y.S.2d 602, 1999.N.Y. Slip Up. 99573 (Cite as: 182 Misc.2d 794, 701 N.Y.S.2d 602)

ution was "honored more in the bre[ach] than in the observance in this county." Finding sufficient authority in Judiciary Law § 35-b(8) and Ake v. Oklohoma, 470 U.S. 68, 86-87, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985) FN1 the court dispensed with the requirement of notice to the adverse party. The Mateo court authorized the defendant to submit exparte applications for subpoensed documents, which the court would review on an individual basis and determine whether notice should be given to the prosecution.

FN1. Judiciary Law § 35-b(8) permits a defendant in a capital case to apply ex parte for the court's authorization of county funding for the cost of "investigative, expert or other" services. The clear intent of the statute is to prevent the disclosure of a defendant's trial strategy by ensuring the court's determination of whether the proposed investigative and expert expenditures are reasonably necessary to the defense are conducted ex parte. Similarly in Ake v. Oklahoma, the United States Supreme Court held that where the assistance of an expert is needed to prepare a defense, an indigent defendant has a constitutional right to the services of that expert at state expense, and a defendant's showing of need is to be made ex parte, Id. at 86-87, 105 S.Ct. 1087, 84 L.Ed.2d 53.

The Van Dyne court granted the same relicf. However, the court emphasized the need for a defendant to comport with the law regardless of local practice, and "seek relief from the notice requirement by application." People v. Van Dyne. supra. at 559, 669 N.Y.S.2d 199. The Van Dyne Court was persuaded by the authorized use of ex parte applications in motions for severance "where the information to support the grounds for severance relief would require revelation of defense strategy." Id., at 559, 669 N.Y.S.2d 199, citing CPL § 200.20(3)(b)(ii); People v. Lane, 56 N.Y.2d 1, 451 N.Y.S.2d 6, 436 N.E.2d 456 (1982). The Van Dyne

court noted that implicit in a defendant's due process right to a fair opportunity to prepare a defense **604 "is the right to gather information without alerting the prosccution to the path of the defense." Id. at 559, 669 N.Y.S.2d 199.

Recently in People v. Santiago, supra the court reached a similar result for a different reason. The Santiago court was persuaded by civil practice scholar David D. Siegel that the requirement for judicial subpoenas duces tecum in CPLR 2307 had outlived its usefulness, since a court's intervention originally was required to prevent the potential abuses posed by a party's access to original public records. Recent amendments to CPLR § 2307 now permit a public agency to comply with the statute by producing photostatic copies in place of originals. The Santiago court thus held that the defense need *797 only give notice to the prosecutor when seeking to obtain original documents, not photostatic copies. Id. at 8, 451 N.Y.S.2d 6, 436 N.E.2d 456.

Notably, the Santiago court reached this conclusion despite its acknowledgment that a court's discretion under CPI. § 610.20(3) and CPLR § 2307 extends only to the authority to amend the time frame for notification to the adverse party, not to the waiving of the notice requirement itself. Id. at 3, 451 N.Y.S.2d 6, 436 N.E.2d 456. In contrast, in People v. Hall, supra the court expressly rejected defendant's claim that heightened due process or constitutional guarantees changed the notice requirement of the statutes, and denied his application.

[4] This Court is in accord with the Supreme Court in *People v. Hall*, and declines to thrust itself into the role of the legislature, but instead elects to strictly construe CPL § 610.20(3) and CPLR § 2307

Also, this Court is not convinced that the defense's strategy would be compromised by the revelation of Defendant's interest in public documents. As the court aptly noted in *People v. Cajigas*, unpublished, slip op. at p. 16 (Westchester Cty. Ct.

182 Misc.2d 794, 701 N.Y.S.2d 602, 1999 M.Y. Slip Op. 5 :673 (Cite as: 182 Misc.2d 794, 701 N.M.S.2d:602)

[Angiolillo, J.] Oct. 16, 1997) when addressing the same issue, "[t]here does not appear to be any great tactical advantage in being aware of an adversary's interest in public documents." Cf. People v. Shulman, unpublished (Suffolk Cty. Ct. [Pitts, J.] Oct. 16, 1997) (holding that a defendant does not have a constitutional right to non-disclosure of mitigating evidence, and the disclosure would not impair such evidence).

The Defendant's motion is denied.

N.Y.Co.Ct.,1999. People v. Owens 182 Misc.2d 794, 701 N.Y.S.2d 602, 1999 N.Y. Slip Op. 99573



Not Reported in N.Y.S.2d, 1999 WL 33313141 (N.Y.Co.Ct.), 1999 N.Y. Slip Op., 40007(U) (Cite as: 1999 WL 33313141 (N.Y.Co.Ct.))

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NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK COUNTY COURT COUNTY OF MONROE THE PEOPLE OF THE STATE OF NEW YORK

JOHN OWENS, Defendant.

Ind. #547/99, Consolidated with Ind. #414/99 DATED: December 10, 1999, Rochester, New York

On Behalf of the People: MICHAEL GREEN, ESQ. Assistant District Attorney

On Behalf of the Defendant: MICHAEL M, MURRAY, BSQ. PETER PULLANO, ESQ. Capital Defenders for the Defendant

EGAN, J.:

*1 This is a potential death penalty case. Defendant John Owens is charged with two counts of Murder in the First Degree, two counts of Murder in the Second Degree, and three counts of Rape in the First Degree. The District Attorney's Office has not yet decided whether to file a Notice of Intent to Seek the Death Penalty pursuant to CPL §250.40.

At a pre-trial conference held before the Court on October 8, 1999, Defendant requested an extension of time to file pre-trial motions. Criminal Procedure Law §255.20 (1) provides in pertinent part that: "all pre-trial motions shall be served or filed within forty-five days after arraignment and before commencement of trial, or within such additional time as the court may fix upon application of the defendant made prior to entry of judgment." Id. The People did not oppose Defendant's application.

Accordingly, all pre-trial motions shall be made within sixty days of the filing of a Notice of Intent to Seek the Death Penalty by the District Attorney's Office.

This shall constitute the Opinion, Decision and Order of this Court.

ZYNY

People v. Owens Not Reported in N.Y.S.2d, 1999 WL 33313141 (N.Y.Co.Ct.), 1999 N.Y. Slip Op. 40007(U)



183 Misc.2d 208, 703 N.Y.S.2d 881, 2000 N.Y. Slip Op. 20047 (Cite as: 183 Misc.2d 208, 703 N.Y.S.2d 881)

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County Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

John OWENS, Defendant.

Dec. 17, 1999.

Defendant in potential death penalty case requested subpoena allowing disclosure of presentence investigation reports prepared in connection with his prior criminal convictions, and State sought similar access. The Monroe County Court, David D. Bgan, J., held that State and defendant demonstrated legitimate basis for disclosure, and thus would be allowed access to prior pre-sentence investigation reports, but not to any sealed records arising out of any youthful offender adjudication afforded defendant.

So ordered.

West Headnotes

[1] Sentencing and Punishment 350H 🔾==293

350H Senteneing and Punishment
350HH Senteneing Proceedings in General
350HH(E) Presentence Report
350Hk292 Disclosure of Report
350Hk293 k. In General. Most Cited

Cases

(Formerly 110k986.5)

Sentencing and Punishment 350H 6 294

350H Sentencing and Punishment
350HH Sentencing Proceedings in General
350HH(E) Presentence Report
350Hk292 Disclosure of Report
350Hk294 k, Disclosure to Defendant.
Most Cited Cases
(Formerly 110k986.5)
A pre-sentence report is confidential in nature

and unavailable to any person, including a criminal defendant, unless specifically authorized by statute or court order. McKinney's CPL § 390.50.

[2] Sentencing and Punishment 350H 293

350H Sentencing and Punishment
350HII Sentencing Proceedings in General
350HII(E) Presentence Report
350Hk292 Disclosure of Report
350Hk293 k. In General. Most Cited

Cases

(Formerly 110k986.5)

Statute provides for disclosure of a presentence investigation report for the limited purposes of sentencing a defendant in a criminal case for which the report was prepared, and for any appeal arising out of that case; any other disclosure is soundly within the discretion of court, and based upon a requisite showing of need. McKiuney's CPL § 390.50, subd. 2(a).

[3] Sentencing and Punishment 350H € 293

350H Sentencing and Punishment
350HH Sentencing Proceedings in General
350HH(E) Presentence Report
350Hk292 Disclosure of Report
350Hk293 k. In General. Most Cited

Cases

(Formerly 110k986.5)

Sentencing and Punishment 350H @== 294

350H Senteneing and Punishment
350HII Sentencing Proceedings in General
350HII(B) Presentence Report
350HIk292 Disclosure of Report
350Hk294 k. Disclosure to Defendant.
Most Cited Cases

(Formerly 110k986.5)

Sentencing and Punishment 350H € 298

350H Sentencing and Punishment

183 Misc.2d 208, 703 N.Y.S.2d 881, 2000 N.Y. Slip Op. 20047 (Cite vs. 183 Misc.2d 208, 703 N.Y.S.2d 881)

350HII Sentencing Proceedings in General 350HII(E) Presentence Report 350Hk292 Disclosure of Report 350Hk298 k. Editing and Redaction.

(Formerly 110k986.5)

Legitimate basis was demonstrated for disclosure to both prosecution, and defendant in potential death penalty case, of pre-sentence investigation reports prepared in connection with defendant's prior criminal convictions, as such reports would assist prosecution in determining whether to seek death penalty, and defendant in dissuading prosecution from making such a determination; however, disclosure would not extend to sealed records arising out of any youthful offender adjudication afforded defendant. McKinney's CPL § 390.50.

**882*208 Michael M. Murray, New York City, and Peter Pullano, Rochester, for defendant.

Howard R. Relin, District Attorney of Monroe County (Michael Green of counsel), for plaintiff.

DAVID D. EGAN, J.

*209 This is a potential death penalty ease. Defendant John Owens is charged with two counts of Murder in the First Degree, three counts of Murder in the Second Degree, and three counts of Rape in the First Degree. The District Attorney's office has not yet decided whether to file a Notice of Intent to Seek the Death Penalty pursuant to CPL § 250.40.

Defendant has asked this Court to sign a subpoena seeking the records of the Monroe County Department of Probation, including pre-sentence investigation reports prepared in connection with Defendant's prior criminal convictions. The defense intends to use the pre-sentence reports and other records both to dissuade the District Attorney from seeking the death penalty and to prepare for mitigation in the sentencing phase of trial. The People do not oppose Defendant's request, but rather ask this Court for similar access to these reports.

[1][2] Pursuant to Criminal Procedure Law § 390.50 a pre-sentence report is confidential in nature and unavailable to any person, including a criminal defendant, unless specifically authorized by statute or court order. Section 390.50(2)(a) provides for disclosure of a pre-sentence investigation report for the limited purposes of sentencing a defendant in a criminal case for which the report was prepared, and for any appeal arising out of that case. Any other disclosure is soundly within the discretion of the Court, and based upon a requisite showing of need.

[3] This Court is mindful that the Fourth Department has held that CPL § 390.50 "does not authorize disclosure of a presentence report in a collateral proceeding discrete from the proceeding for which the report was originally prepared." Salamone v. Monroe County Department of Probation, 136 A.D.2d 967, 524 N.Y.S.2d 943 (4th Dept.1988) . Nonetheless the Court finds that both the People and the defense have demonstrated a legitimate basis for disclosure of any pre-sentence investigation report, namely, to assist the District Attorney in determining whether to seek the death penalty, and the defense in dissuading the District Attorney from making such a determination. Accordingly, any pre-sentence report shall be disclosed to the defense and the People. Disclosure shall not extend. however, to sealed records arising out of any youthful offender adjudication afforded the Defendant. Id.: **883People v. Whitehurst, 167 Mise.2d 383. 386, 640 N.Y.S.2d 409 (Sup.Ct. Queens Cty.1996).

N.Y.Co.Ct.,1999. People v. Owens 183 Misc.2d 208, 703 N.Y.S.2d 881, 2000 N.Y. Slip Op. 20047



184 Misc.2d 597, 711 N.Y.S.2d 884, 2000 N.Y. Slip Op. 20306 (Cite as: 184 Misc.2d 597, 711 N.Y.S.2d 884)

Page 1

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County Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

John OWENS, Defendant.

April 19, 2000.

Defendant who was charged in indictment with capital murder filed motion seeking release of minutes of grand jury proceedings, and order compelling prosecutor to respond to interrogatories regarding grand jury proceedings, in anticipation of a subsequent motion to dismiss. The County Court, Monroe County, David D. Egan, J., held that defendant was not entitled to disclosure of grand jury minutes, as in camera inspection of minutes indicated that sufficient evidence was presented to support indictment, and that proceeding was not defective.

Motion granted in part and denied in part.

West Headnotes

[1] Grand Jury 193 €==41.50(5)

193 Grand Jury 193k41 Secreey as to Proceedings 193k41.50 Permitting Disclosure 193k41.50(5) k. Necessity; Use in or Con-

nection with Judicial Proceeding, Most Cited Cases

Defendant who had been indicted on capital murder charges was not entitled to release of grand jury minutes, in anticipation of a future motion to dismiss, where in camera inspection of grand jury minutes indicated that sufficient evidence was presented to support indictment, that legal instructions to grand jury were properly recorded and legally sufficient, and that proceeding was not defective, charges in indictment were straightforward and posed no novel legal concepts, and there was no Brady material in minutes. McKinney's CPL §§ 190.25, subd. 4(a), 210.30.

[2] Criminal Law 110 €==627.9(2.1)

110 Criminal Law

110XX Trial

110XX(A) Preliminary Proceedings 110k627.9 Grand Jury Proceedings; Dis-

closure

110k627.9(2) Grounds for Disclosure

or Inspection
Cited Cases

110k627.9(2.1) k. In General. Most

Grand Jury 193 €==41.50(4)

193 Grand Jury

193k41 Secreey as to Proceedings 193k41.50 Permitting Disclosure 193k41.50(4) k. Grounds or Objections in General. Most Cited Cases

Defendant who had been indicted on capital murder charges was not entitled to order compelling prosecutor to respond to interrogatories relating to grand jury proceedings and indictment, where in camera inspection of grand jury minutes indicated that sufficient evidence was presented to support indictment, that legal instructions to grand jury were properly recorded and legally sufficient, and that proceeding was not defective, charges in indictment were straightforward and posed no novel legal concepts, and there was no Brady material in minutes. McKinney's CPL §§ 190.25, subd. 4(a), 210.30.

[3] Grand Jury 193 @-41.50(4)

193 Grand Jury

193k41 Secrecy as to Proceedings 193k41.50 Permitting Disclosure 193k41.50(4) k. Grounds or Objections in General. Most Cited Cases

Potential penalty in a capital case does not warrant disclosure of grand jury minutes.

**884*597 D. Michael Murray and Peter J. Pullano Rochester, for defendant. 184 Misc.2d 597, 711 N.Y.S.2d 884, 2000 N.Y. Slip Op. 20306 (Cite as: 184 Misc.2d 597, 711 N.Y.S.2d 884)

Howard R. Relin, District Attorney of Monroe County (Michael Green of counsel), for plaintiff.

DAVID D. EGAN, J.

This is a death penalty case. Defendant John Owens is *598 charged with two counts of Murder in the First Degree, three counts of Murder in the Second Degree, and three counts of Rape in the First Degree. The District Attorney's office filed a Notice of Intent To Seek The Death Penalty pursuant to CPL § 250.40 on January 24, 2000. With no bail request made to date, Defendant is currently being held in the Monroe County Jail awaiting his trial.

Anticipating a future motion to dismiss, Defendant requests that this Court inspect and release the stenographic minutes of the Grand Jury proceedings pursuant to Criminal Procedure Law §§ 210.30 and 190.25(4)(a). In the alternative, Defendant asks this Court to require the District Attorney to answer cightly (80) interrogatories, seventy-seven (77) pertaining to the Grand Jury proceedings and three (3) related to the indictment.

Criminal Procedure Law § 190.25(4)(a) provides that "[g]rand jury proceedings **885 are secret, and no grand juror, or other person ... may, except ... upon written order of the court, disclose the nature or substance of any grand jury testimony, evidence, or any decision, result or other matter attending a grand jury proceeding." Under CPL § 210.30(3) the release of grand jury testimony is authorized solely when it is "necessary to assist the court in making its determination on [a Defendant's dismissal] motion." CPL § 210.30(3) further restricts the release of the minutes to "that grand jury testimony which is relevant to a determination of whether the evidence before the grand jury was legally sufficient to support a charge or charges eontained in such indictment."

[1][2] This Court examined the Grand Jury minutes in comera and finds that sufficient evidence was presented to support the indictment. Nor was the Grand Jury proceeding defective. The legal instructions to the Grand Jury were properly recorded and legally sufficient. See People v. Calbud, Inc., 49 N.Y.2d 389, 426 N.Y.S.2d 238, 402 N.E.2d 1140 (1980).

Despite Defendant's allegations otherwise, the charges herein are straightforward and pose no novel concepts since they mirror well-established noncapital crimes. Cf. e.g., felony murder, Penal Law § 125.25(3), with Penal Law § 125.27(1)(a)(vii) and (b) (charged in the First and Second Counts of Indictment No. 547/99); see also, People v. Van Dyne, unpublished, slip opn. at p. 3 (Mon.Cty.Ct. [Marks, J.] (September 3, 1998)). Thus, the release of the minutes is not required under CPL § 210.30(3) to assist this Court in its determination. See Sacket v. Bartlett, 241 A.D.2d 97, 101-02, 671 N.Y.S.2d 156 (3rd Dept.1998); People v. Cjigas, unpublished, slip opn. at p. 36 (Westchester Cty.Ct. [Angiolillo, J.] March 13, 1998); *599 People v. Shulman, 172 Misc.2d 535, 536, 658 N.Y.S.2d 794 (1997); People v. Hale, slip opn. at 32-33, 173 Misc.2d 140, 661 N.Y.S.2d 457 (Sup.Ct., Kings Cty. 1997) (edited for publication); People v. Abdallah a/k/a Tom Cruise, unpublished, slip opn, at p. 2 (Mon.Cty.Ct. [Wisner, J.] May 16, 1996). But, cf. People v. Parker, Indietment No. 97-0762-001, unpublished, slip opn. at 24 (Eric Cty.Ct. [D'Amico, J.] July 2, 1998) and People v. Grinnell, unpublished, slip opn. at p. 2 (Genesee Cty.Ct. [Griffith, J.] March 12, 1997) (finding defendant had made specific and compelling objections requiring release of grand jury minutes under CPL § 210.30(3)).

[3] Defendant also argues that a "heightened due process" constitutionally afforded all eapital defendants compels the release of the minutes. In a myriad of unpublished opinions, the Courts of New York have uniformly rejected the notion that the potential penalty in a capital case warrants disclosure of grand jury minutes. See e.g., People v. Sontiago, unpublished, slip opn. at p. 2 (Monroe Cty.Ct. [Bristol, J.] January 26, 2000); People v. Van Dyne, supra; People v. Johnson, unpublished,

184 Miso.2d 597, 711 N.Y.S.2d 884, 2006 N.Y. Slip Cp. (Cite'as: 184 Misc.2d 597, 711 N.Y.S.2d 804)

slip opn. at p. 3 (Albany Cty. Ct. [Breslin, I.] July 27, 1998); People v. Bell, slip opn. at 29, 172 Misc.2d 308, 659 N.Y.S.2d 713 (Sup.Ct., Queens County 1997); People v. Chinn, NYLJ, Nov. 19, 1996, at 31, col 3 (Onondaga Cty.Ct.1996). Defendant suggests, however, that the unique character of this capital ease compels disclosure. This is the first case in Monroe County where a defendant has been charged with the First Degree Murder of two victims arising out of separate incidents, and yet has not been indicted as a serial murderer. This is a distinction without a difference. See People v. Shulman, supra.

Finally, there is no Brady material in the minutes requiring release. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Bd.2d 215 (1963); cf. Peaple v. Margan, 178 Misc.2d 595, 600-01, 682 N.Y.S.2d 533 (Fulton Cty.Ct.1998). This Court finds no reason to depart from the clear mandate of CPL § 210.30.

Accordingly, Defendant's motion to inspect the Grand Jury minutes is granted. **886 Defendant's motion to release the Grand Jury minutes is denied. For the same reasons articulated above, this Court declines to require the District Attorney to answer the eighty (80) interrogatories relating to the Grand Jury proceedings and the indictment.

N.Y.Co.Ct.,2000. People v. Owens 184 Misc.2d 597, 711 N.Y.S.2d 884, 2000 N.Y. Slip Op. 20306

Not Reported in N.Y.S.2d, 2000 WL 33418975 (N.Y.Co.Ct.), 2000 N.Y. Slip Op. 40002(U) (Cite as: 2000 WL 33418975 (N.Y.Co.Ct.))

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NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK COUNTY COURT COUNTY OF MONROE THE PEOPLE OF THE STATE OF NEW YORK

JOHN OWENS, Defendant.

lnd. No. 547/99 Consolidated with Indictment No. 414/99

DATED: April 24, 2000, Rochester, New York

HOWARD RELIN, ESQ. Monroe County District Attorney MICHAEL GREEN, ESQ. Assistant District Attorney

D. MICHAEL MURRAY, ESQ. PETER J. PUL-LANO, ESQ. Attorneys for the Defendant

EGAN, J.:

*1 This is a death penalty case. Defendant John Owens is charged with two counts of Murder in the First Degree, three counts of Murder in the Second Degree, and three counts of Rape in the First Degree. The District Attorney's office filed a Notice of Intent To Seek The Death Penalty pursuant to Criminal Procedure Law ("CPL") \$250.40 on January 24, 2000.

Defendant seeks to compel the People to respond more fully to his request for a Bill of Particulars. Defendant relics on the oft-cited notion of "heightened due process."

The purpose of a bill of particulars in a criminal proceeding is not to obtain evidence but rather to clarify an indictment. CPL §200.95. In drafting the death penalty statutes, the Legislature did not amend the bill of particulars provisions of the

Criminal Procedure Law. Id. Defendant is only entitled to the particulars of the crime charged. People v. Mackey, 49 NY2d 274, 278 (1980); People v. lamone, 45 NY2d 589 (1978). Any notion of "heightened due process" does not give this Court the authority to redefine statutory criminal law.

The exact sequence of events is not a necessary element of the crime of First Degree Murder in violation of Penal Law §125.27(1)(a)(vii)(b). It is sufficient that the proof show that a death caused by a defendant occurred while "in the course of or furtherance of" a rape or attempted rape, or "in the course of and in furtherance of the immediate flight" therefrom. Penal Law §125.27(1)(a)(vii)(b); CPL §200.95; see also, People v. Van Dyne, unpublished, p. 3 (Mon. Cty. Ct. [Marks, J.] September 2, 1998); cf. People v. Perryman, 178 AD2d 916 (4th Dept. 1991) (the use of the conjunctive "and or" in the People's Bill of Particulars is not duplicitous).

Nor does the law require the People to specify in a bill of particulars whether the First Degree Murder charges are predicated upon the allegations that Defendant killed two different victims during the commission of Rape in the First Degree, or Attempted Rape in the First Degree. Id. Further, Defendant has not shown that he cannot adequately prepare or conduct his defense in the absence of this information.

FN1. The Court notes that through a multitude of other discovery devices Defendant is able to obtain this information.

Defendant also sceks information concerning the conduct that constituted forcible compulsion within the meaning of Penal Law §130.35. Specifically, Defendant requests clarification whether the forcible compulsion consisted of the use of force or threats, and if threats are alleged, whether they were express or implied. This Court finds that the Bill of Particulars is sufficient to apprise Defendant of the theory to be advanced at trial without

Not Reported in N.Y.S.2d, 2000 WL 33418975 (N.Y.Co Ct.), 2000 N.Y. Stip Op. 40002(U) (Cite as: 2000 WL 33418975 (N.Y.Co.Ct.))

requiring the disclosure of evidence. See People v. Earel, 220 AD2d 899 (3rd Dept. 1995), aff'd on other grounds, 89 NY 2d 960 (1997).

*2 Finally, Defendant asks what were the "exact date, time and place" of the alieged murders set forth in the first four counts of the indietment. CPL §200.50(6) requires that each count of an indictment indicate a designated date or period of time the charged offense was committed. An indietment as supplemented by a bill of particulars may allege the time in approximate terms, so long as it is not an essential element of the offense charged. People v. Watts, 84 NY2d 948, 949 (1994); People v. Morris, 61 NY2d 290, 292 (1984). This Court finds that the District Attorney's Bill of Particulars designates a time interval for each offense that comports with Defendant's constitutional right to be reasonably informed of charges against him. The Court denies Defendant's request for any further information concerning the time of the alleged offenses.

Accordingly, Defendant's motion to compel a further response to his request for a Bill of Particulars is denied.

The Court notes that the Bill of Particulars annexed as Exhibit A to Defendant's motion is not the pleading (marked as DEF 6), which was filed with this Court and served upon the District Attorney's office. Exhibit A shall be stricken from the record for purposes of any further action and, or proceeding.

This shall constitute the Opinion, Decision and Order of this Court,

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People v. Owens
Not Reported in N.Y.S.2d, 2000 WL 33418975
(N.Y.Co.Cl.), 2000 N.Y. Slip Op. 40002(U)



Not Reported in N.Y.S.2d, 2000 WL 33418977 (N.Y.Co.Ct.), 2000 N.Y. Slip Op. 40003(U) (Cite as: 2000 WL 33418977 (N.Y.Co.Ct.))

NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK COUNTY COURT COUNTY OF MONROE
THE PEOPLE OF THE STATE OF NEW YORK,

JOHN OWENS, Defendant.

Ind. #547/99 Consolidated with #414/99 DATED: May 25, 2000, Rochester, New York

On Behalf of the People: HOWARD RELIN, ESQ. Monroe County District Attorney MICHAEL GREEN, ESQ. Special Assistant District Attorney JOANNE WINSLOW, ESQ. Assistant District Attorney

On Behalf of the Defendant: D. MICHAEL MUR-RAY, ESQ. PETER J. PULLANO, ESQ. Attorneys for the Defendant

EGAN, J.:

*1 This is a death penalty case. Defendant John Owens is charged with two eounts of Murder in the First Degree, three counts of Murder in the Second Degree, and three counts of Rape in the First Degree. The District Attorney's office filed a Notice of Intent To Seek The Death Penalty pursuant to CPL §250.40 on January 24, 2000.

Defendant requests an order declaring CPL §400.27 (3) unconstitutional both on its face and as it is applied to this case. Defendant further seeks an order invalidating CPL §400.27 to the extent it bars Defendant from challenging aggravating factors at sentencing. In the alternative, Defendant urges this Court to refrain from instructing the jury at senten-

cing that an aggravating factor proven during trial is to be deemed proven beyond a reasonable doubt, and instead to allow the defense to re-litigate these factors. The People oppose all applications.

CPL §400.27(3) prohibits the District Attorney from introducing evidence of aggravating factors at the sentencing phase of a trial that he failed to prove beyond a reasonable doubt during the guilt phase. This restriction benefits a defendant by preventing the People, except in two specific circumstances FN1, from introducing evidence of any additional aggravating factors, and by confining them to rebutting mitigating evidence. The capital sentencing scheme meets the standards of the New York and United States Constitutions. In accord, People v. Harris, 177 Misc. 2d 165, 166 (Kings Cty. Ct. 1998); People v. Mateo, 175 Misc 2d 192, 220 (Mon. Cty. Ct. 1997). Penal Law §125.27(1) " 'genuinely narrow[s] the class of persons eligible for the death penalty' " by delineating twelve distinct aggravating factors that raise the gravity of their erimes above other murders. See Lowenfield v Phelps, 484 US 231, 244(1988)^{FN2}. CPL §400.27(3) then employs a balancing test, justifying the imposition of a death sentence in only those cases where those aggravating factors proved at trial substantially outweigh all mitigating evidence. See CPL §§400.27(3), (6), and (11). Despite the defense's claims otherwise, CPL §400.27(3) provides for an individualized sentencing determination by allowing the Defendant to challenge any aggravating factors by presenting mitigating evidence "concerning the crime, the defendant's state of mind or condition at the time of the crime. . ." even in hearsay form. See CPL §400.27(9)(f).

FN1. CPL §400.27(7) lists two exceptions to this rule. Neither apply to this ease.

FN2. As the United States Supreme Court noted there is "...no reason why this narrowing function may not be performed by jury findings at either the sentencing phase Not Reported in N.Y.S.2d, 2000 WL 33418977 (N.Y.Co.Ct.), 2000 N.Y. Slip Op. 40003(U) (Cite as: 2000 WL 33418977 (N.Y.Co.Ct.))

of the trial or the guilt phase." Lowenfield, supra, at 244-45.

*2 Defendant has not overcome the presumption of validity of the challenged statute demonstrated CPL §400.27(3) to be unconstitutional beyond a reasonable doubt. People v. Foley, 2000 N.Y. LEXIS 521 (April II, 2000); People v. Bright, 71 NY2d 376, 382 (1988). Defendant's motion is therefore denied.

This shall constitute the Opinion, Decision and Order of this Court.

ZYNY
People v. Owens
Not Reported in N.Y.S.2d, 2000 WL 33418977
(N.Y.Co.Ct.), 2000 N.Y. Slip Op. 40003(U)

Not Reported in N.Y.S.2d, 2000 WL 33418979 (N.Y.Co.Ct.), 2000 N.Y. Slip Op. 40004(U) (Cite as: 2000 WL 33418979 (N.Y.Co.Ct.))

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NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK COUNTY COURT
COUNTY OF MONROE
THE PEOPLE OF THE STATE OF NEW YORK,

v.
JOHN OWENS, Defendant.

Ind. # 547/99 Consolidated with #414/99 DATED: May 30, 2000, Roehester, New York

HOWARD RELIN, ESQ. Monroe County District Attorney MICHAEL GREEN, ESQ. Special Assistant District Attorney JOANNE WINSLOW, ESQ. Assistant District Attorney

D. MICHAEL MURRAY, ESQ: PETER J. PUL-LANO, ESQ Attorneys for the Defendant

EGAN, J.:

*1 This is a death penalty case. Defendant John Owens is charged with two counts of Murder in the First Degree, three counts of Murder in the Second Degree, and three counts of Rape in the First Degree. The District Attorney's office filed a Notice of Intent To Seek The Death Penalty pursuant to CPL §250.40 on January 24, 2000.

Criminal Procedure Law §400.27(10) provides that, after rendering a guilty verdiet, but before sentencing, the court shall instruct the jury that they must reach a unanimous verdict concerning whether to impose a sentence of death, or life inprisonment without the possibility of parole. CPL §400.27(10) further requires the court to instruct the jury that if they are unable to reach a unanimous verdict concerning sentencing, "the court will sentence the de-

fendant to a term of imprisonment with a minimum term of between twenty and twenty-five years and a maximum term of life." CPL §400.27(10).

Defendant seeks an order invalidating CPL §400.27(10), or alternatively, asks the Court to refrain from instructing the jury concerning the consequences of not reaching a unanimous verdict on sentencing. Defendant argues that this anticipatory deadlock instruction may coerce jurors who favor a life sentence without the possibility of parole to vote for death, simply to avoid the more lenient sentence. Defendant contends that the potential effeet of "leading some jurors to vote for death, not because they believe it is the appropriate sentence, but because they feel that the possibility of release is not a reasonable alternative to death" renders CPL §400,27(10) unconstitutional. Defendant also complains that the verdiet sheet promulgated by the Office of Court Administration listing "not unanimous" as a sentencing determination is also improper.

The People oppose all aspects of Defendant's motion. The People also urge that Defendant lacks standing to challenge the constitutionality of CPL §400.27(10), and the issue is not ripe for this Court's determination. This Court disagrees but finds that Defendant has not proved beyond a reasonable doubt that CPL §400.27(10) is unconstitutional.

FN1. The parties need to have this Court's decision in preparing for voir dire. See People v. Santiago, unpublished, p. 3 (Mon. Cty. Ct. [Bristol, J.] (January 18, 2000); People v. Van Dyne, unpublished, p. 4 (Mon. Cty. Ct. [Marks, J.] (September 2, 1998); Cf. People v. McIntosh, unpublished p. 4 (Dutchess Cty. Ct. [Marlow, J.] 1998); People v Chinn, NYLJ p. 32, col. 6 (October 29, 1998).

*2 The courts of New York have almost uni-

Not Reported in N.Y.S.2d; 2000 WL 33418979 (N.Y.Co.Ct.), 2000 N.Y. Slip Op. 40004(U) (Cite as: 2000 WL 33418979 (N.Y.Co.Ct.))

formly rejected the notion that CPL §400.27(10) is nnconstitutional. People v. Santiago, unpublished, p. 3 (Mon. Cty, Ct. [Bristol, J.] (Japnary 18, 2000); People v. Gordon, NYLJ, p. 32, col. 6 (October 29, 1998); People v. Van Dync, unpublished, p. 4 (Mon. Cty. Ct. [Marks, J.] (September 2, 1998); People v. Parker, unpublished, p. 38-41 (Erie Cty. Ct. [D' Amico, J.] (July 2, 1998); People v. Shulman, NYLJ p. 35, col. 4 (January 30, 1998); People v. Mateo, 175 Mise. 2d 192, 225 (Mon. Cty. Ct. 1997). While one court has found that CPL §400.27 (10) is unconstitutional, and refused to instruct the jury in anticipation of a potential deadlock [People v. Harris, 177 Misc. 2d 160, 164 (Sup. Ct. Kings Co. 1998)], that jury later inquired on its own about the consequences of not reaching a unanimous verdict, and ultimately, sentenced that defendant to death.

This Court agrees with the rationale of New Jersey's highest court when it refused to invalidate a similar anticipatory deadlock instruction, "to hide from the jury the full range of its sentencing options, thus permitting its decision to be based on uninformed and possibly inaccurate speculation, is to mock the goals of rationality and consistency required by modern death penalty jurisprudence." State v. Ramseur, 106 NJ 123, 309, 524 A2d 188, (1987); see also, State v. Brown, 138 NJ 481, 651 A2d 19 (1994) (finding NJSA 2C:11-3f constitutional); cf. Jones v. United States, 527 US 373, 383

The anticipatory deadlock instruction correctly advises the jury that a non-unanimous verdict is a final verdict. See People v. Shulman, supra. Nor does this Court find that the instruction tips the scales in favor of death. Cf. People v. Harris, supra. It is as likely that those jurors who favor life without the possibility of parole will persuade death-prone jurors to change their vote to avoid a non-unanimous verdict, and its associated lenient sentence. Instead the deadlock instruction actually benefits the Defendant by encouraging all jurors to stand by their beliefs, since a non-unanimous ver-

dict is a final verdict, consistent with their carlier vote for conviction.

Defendant's motion is denied.

This shall constitute the Opinion, Decision and Order of this Conrt.

ZYNY
People v. Owens
Not Reported in N.Y.S.2d, 2000 WL 33418979
(N.Y.Co.Ct.), 2000 N.Y. Stip Op. 40004(U)



184 Misc.2d 600, 710 N.Y.S.2d 790, 2000 N.Y. Slip Op. 20307 (Cite as: 184 Misc.2d 600, 710 N.Y.S.2d 790)

Page 1

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Supreme Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

John OWENS, Defendant.

June 5, 2000.

Capital murder defendant sought declaratory relief in form of order declaring statute and constitutional provision prohibiting waiver of jury in capital prosecution invalid or inapplicable to guilt phase of his trial. The Supreme Court, Monroe County, David D. Egan, J., held that: (1) issue of invalidity or inapplicability of statute and constitutional provision at issue was not yet ripe for adjudication, and (2) defendant failed to establish unconstitutionality or inapplicability of statute and constitutional provision at issue beyond reasonable doubt.

Motion denied.

West Headnotes

[1] Jury 230 0=29(2)

230 Jury

230II Right to Trial by Jury 230k27 Waiver of Right 230k29 In Criminal Cases

230k29(2) k. Right to Waive Jury in

General. Most Cited Cases

Capital murder defendant is prohibited from waiving a jury trial at either phase of his trial. McKinney's Const. Art. 1, § 2; McKinney's CPL § 320.10.

[2] Declaratory Judgment 118A 🖘 121

118A Declaratory Judgment 118AII Subjects of Declaratory Relief 118AII(D) Constitutions 118AkI21 k. In General, Most Cited

Cases

Declaratory Judgment 118A @== 124.1

118A Declaratory Judgment 118AII Subjects of Declaratory Relief 118AII(E) Statutes

118Ak124 Statutes Relating to Particular Subjects

118Ak124.1 k. In General. Most Cited

Cases

Issue of invalidity or inapplicability of statute and constitutional provision prohibiting waiver of jury in capital prosecution was not yet ripe for adjudication, on capital murder defendant's application for declaratory relief in form of order declaring statute and constitutional provision prohibiting waiver of jury in capital prosecution invalid or inapplicable to guilt phase of his trial, where defendant had not yet requested bench trial. McKinney's Const. Art. 1, § 2; McKinney's CPL § 320.10.

[3] Jury 230 (===29(2)

230 Jury

23011 Right to Trial by Jury 230k27 Waiver of Right 230k29 In Criminal Cases

230k29(2) k. Right to Waive Jury in

General. Most Cited Cases

Capital murder defendant failed to establish beyond reasonable doubt unconstitutionality or inapplicability of statute and constitutional provision prohibiting waiver of jury in eapital prosecution, where prohibiting bore rational relationship to legitimate governmental purpose and statutory provision allowing separate jury at sentencing phase applied only under extraordinary circumstances and for good cause shown. McKinney's Const. Art. 1, § 2; McKinney's CPL §§ 320.10, 400.27, subd. 2.

[4] Criminal Law 110 €-251

110 Criminal Law

110XIII Nonjury or Bench Trial and Conviction

184 Misc.2d 600, 710 N.Y.S.2d 790, 2000 N.Y. Slip Op. 20307 (Cite as: 184 Misc.2d 600, 710 N.Y.S.2d 790)

110k251 k. Rights of Accused in General.

Most Cited Cases

While federal and state constitutions guarantee a defendant a right to a jury trial, no similar guarantee is bestowed upon the right to a bench trial. U.S.C.A. Const. Art. 3, § 2, cl. 3; McKinney's Const. Art. 1, § 2.

[5] Constitutional Law 92 5-3811

92 Constitutional Law

92XXVI Equal Protection 92XXVI(F) Criminal Law

92k3807 Sentencing and Punishment 92k3811 k. Capital Punishment; Death

Penalty, Most Cited Cases

(Formerly 92k213.1(1))

Capital defendants are not a suspect class under an equal protection analysis. U.S.C.A. Const.Amend. 14.

[6] Constitutional Law 92 3830

92 Constitutional Law

92XXVI Equal Protection

92XXVI(G) Juries

92k3830 k. In General, Most Cited Cases (Formerly 92k250.2(4))

Equal protection clause merely prescribes that the prohibition against waiver of the right to a jury trial in a capital case bear a rational relationship to a legitimate government purpose. U.S.C.A. Const.Amend. 14; McKinney's Const. Art. 1, § 2; McKinney's CPL § 320.10.

[7] Jury 230 @==29(2)

230 Jury

230H Right to Trial by Jury 230k27 Waiver of Right 230k29 In Criminal Cases

230k29(2) k. Right to Waive Jury in

General. Most Cited Cases

Prohibition against waiver of right to jury trial in a capital case bore rational relationship to legitimate government purpose of interposing jury to act as safeguard between an individual and tyranny of the state, and reflected legitimate reluctance to entrust plenary powers over life and liberty of the citizen to one judge rather than to jurors representing conscience and moral judgment of community. U.S.C.A. Const.Ameud. 14; McKinney's Const. Art. 1, § 2; McKinney's CPL § 320.10.

[8] Jury 230 €==29(2)

230 Jur

230lI Right to Trial by Jury 230k27 Waiver of Right 230k29 In Criminal Cases

230k29(2) k. Right to Waive Jury in

General. Most Cited Cases

Statutory prohibition against waiver of jury trial in capital cases was not superseded by provision of death penalty statute permitting bifurcation of eapital proceedings and empanelment of separate jury at sentencing phase, where death penalty statute envisioned use of separate jury at sentencing only in extraordinary circumstances and for good cause shown. McKinney's CPL §§ 320.10, 400.27, subd. 2.

**791*600 D. Michael Murray and Peter J. Pullano , Rochester, for defendant.

Howard R. Relin, District Attorney of Mouroe County (Michael Green and Joanne Winslow, Rochester, of counsel), for plaintiff.

DAVID D. EGAN, J.

*601 Defendant seeks an Order declaring both Criminal Procedure Law § 320.10 and that portion of Article I, § 2, of the New York Constitution which denies a capital defendant the right to waive a jury in the guilt phase of his trial invalid, or, in the alternate, inapplicable to the guilt phase of Defendant's trial

[1] Article I, § 2 of the New York Constitution and CPL § 320.10 prohibit a capital defendant from waiving a jury trial at either phase of his trial. Article 1, § 2, of the New York Constitution provides 134 Misc.2d 600, 710 N.Y.S.2d 790, 2000 N.Y. Slip Op. 20307 (Cite as: 184 Misc.2d 600, 710 N.Y.S.2d 790)

in relevant part: "[a] jury trial may be waived by the defendant in all criminal cases, except those in which the crime charged may be punishable by death." CPL § 320.10(1) permits all criminal defendants to waive a jury trial "[e]xcept where the indictment charges the crime of murder in the first degree."

Under the guise of "heightened due process," Defendant argues that he has a constitutional right to waive a jury trial. Defendant also claims that the prohibition against a nonjury trial violates his rights of equal protection and due process by depriving him of a tactical option available to non-capital defendants. Defendant emphasizes that "a judge ... may be better suited to analyze the evidence without [being] sway[ed] by pretrial publicity." This case, like any murder trial, has received some media attention.

The People oppose all aspects of Defendant's motion. The People also urge that Defendant laeks standing to challenge the constitutionality of CPL § 320.10 and the relevant portion of Article I, § 2, of the New York Constitution, and the issue is not ripe for this Court's determination, since Defendant has yet to request a bench trial, or been convicted of first degree murder and sentenced to death.

[2] Defendant's indictment for First Degree Murder "brought [him] squarely within the statutory scheme which he argues is facially defective." **792People v. McIntosh, 173 Misc.2d 727, 728, 662 N.Y.S.2d 214 (Dutchess Cty.Ct.1997); see also, People v. Van Dyne, unpublished, p. 2 (Mon.Cty.Ct. [Marks, J.] (September 2, 1998)). But this Court finds that since this Defendant has yet to make a request for a bench trial the issue is not ripe. Cf. People v. Santiago, unpublished, p. 3 (Mon.Cty.Ct. [Bristol, J.] (December 21, 1999)). Even if Defendant were to make a perfunctory request for a bench trial, the same would be denied.

[3][4] This Court finds that Defendant has not proved beyond a reasonable doubt that CPL § 320.10 and that portion of Article I, § 2, of the New

York Constitution are unconstitutional, or should be invalidated. Accord People v. Johnson, unpublished p. 18 [Breslin, J.] (Albany Cty.Ct. July 27, 1998); *602People v. McIntosh, 173 Misc.2d 727, 734-35, 662 N.Y.S.2d 214 (Dutchess Cty.Ct.1997); People v. Mateo, 175 Misc.2d 192, 664 N.Y.S.2d 981 (Mon.Cty.Ct.1997). Our Federal and State constitutions guarantee a defendant a right to a jury trial. U.S. Const. Art. III, § 2, cl. (3); NY Const. Art. I, § 2 (the right to a jury trial "shall remain inviolate forever"). No similar guarantee is bestowed upon the right to a bench trial. United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968); Singer v. United States, 380 U.S. 24, 34, 85 S.Ct. 783, 13 L.Ed.2d 630 (1965).

[5][6][7] Nor are capital defendants a suspect class under an equal protection analysis. Gray v. Lucas, 677 F.2d 1086, 1106 (5th Cir.1982); People v. Parker, unpublished, p. 38 [D'Amico, J.] (Erie Cty.Ct. July 2, 1998). Since there is neither a suspeet elass nor a fundamental right at issue, the equal protection clause merely prescribes that the prohibition bear a rational relationship to a legitimate government purpose. People v. Walker, 81 N.Y.2d 661, 668, 603 N.Y.S.2d 280, 623 N.E.2d 1 (1993). The prohibitions against nonjury trials allow a jury to act as a safeguard between an individual and the tyranny of the State, and reflect the logitimate "reluetance to entrust plenary powers over the life and liberty of the citizen to one judge ..." (Duncan v. Louisiana, 391 U.S. 145, 156, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968)), rather than to twelve jurors who represent the "conscious and moral judgment of the community." People v. Hale, 173 Misc.2d 140, 188, 661 N.Y.S.2d 457 (Sup.Ct., Kings County); Hynes v. Tomei, 237 A.D.2d 52, 666 N.Y.S.2d 687 (2d Dept.1997).

[8] Defendant further claims CPL § 320.10 is anachronistic since the recently enacted death penalty statutes provide for a bifurcated trial. A defendant's waiver of a jury at the guilt phase now no longer precludes a jury from sentencing him. Defendant's claim of heightened due process does not

184 Misc.2d 600, 710 N.Y.S.2d 790, 2000 N.Y. Stif Op, 20307 (Cite as: 184 Misc.2d 600, 710 N.Y.S.2d 790)

warrant rewriting the death penalty statutes. Although providing for bifurcation, CPL § 400.27(2) envisions the use of a distinct jury for sentencing only in "extraordinary circumstances" and for "good cause [shown]." See People v. Johnson, supra, slip opn., at p. 21.

Defendant's motion is denied.

N.Y.Sup.,2000. People v. Owens 184 Mise.2d 600, 710 N.Y.S.2d 790, 2000 N.Y. Slip Op. 20307

Not Reported in N.Y.S.2d, 2000 WL 33421394 (N.Y.Sup.), 2000 N.Y. Slip Op. 40009(U) (Cite as: 2000 WL 33421394 (N.Y.Sup.))

NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS, NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE
THE PEOPLE OF THE STATE OF NEW YORK,

JOHN OWENS, Defendant.

Ind. #547/99 Consolidated #414/99 DATED: June 21, 2000, Rochester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Special Assistant District Attorney JOANNE M. WINSLOW, ESQ. Assistant District Attorney

D. MICHAEL MURRAY, ESQ. PETER J. PUL-LANO, ESQ Attorneys for the Defendant

EGAN, J.:

*1 This is a death penalty case. Defendant John Owens is charged with two counts of Murder in the First Degree, three counts of Murder in the Second Degree, and three counts of Rape in the First Degree. The District Attorney's office filed a Notice of Intent To Seek The Death Penalty pursuant to CPL §250.40 on January 24, 2000.

Criminal Procedure Law §400.27(14) authorizes discovery after conviction for the purposes of sentencing. Defendant objects to CPL §400.27 (14)(a)(ii) because it incorporates the "reverse" Rosario discovery provision embodied in CPL §240.45 into the capital sentencing proceeding. Defendant argues that CPL §400.27(14)(a)(ii) will have a "chilling effect" on Defendant's sentencing phase strategy by compelling the disclosure of mitigation materials, and thus is unconstitutional. See

New York Const., Art. 1.; U.S. Const., Amds. 5th, 6th, 8th and 14th.

Criminal Procedure Law §400.27(14) requires that both the prosecution and the defense disclose "[a]t a reasonable time prior to the sentencing proceeding" all relevant undisclosed discovery materials, which are not subject to protective order, and any Rosario materials relating to witnesses they intend to call.

This Court finds no constitutional infirmity. CPL §400.27(14) treats the prosecution and the defense equalty. Accord People v. Page, unpublished, p. 1 (Kings Cty. Ct. [Hall, J.] (October 22, 1998); People v. Shulman, NYLJ p. 25 (December 4, 1997); People v. Mateo, 175 Mise. 2d 192, 224 (Mon. Cty. Ct. 1997); see also, People v. Capicotto, 50 NY2d 222, 226 (1980).

Reciprocal discovery is an integral part of criminal procedure. Id. As the United States Supreme Court noted in Wardius v. Oregon, 412 US 470, 474 (1973) "[t]he growth of such discovery devices is a salutary development which, by increasing the evidence available to both parties, enhances the fairness of the adversary system." Id.; see Williams v. Florida, 399 US 79, 82 (1970) (upholding state statute requiring a defendant to disclose the names of alibi witnesses). Defendant's elaim of "heightened due process" does not warrant a different result.

Defendant has not overcome the presumption of validity of the challenged statute, nor demonstrated CPL §400.27(14) to be unconstitutional beyond a reasonable doubt. People v. Foley, 2000 N.Y. LEXIS 521 (April 11, 2000); People v. Bright, 71 NY2d 376, 382 (1988).

*2 Defendant's motion is denied.

This shall constitute the Opinion, Decision and Order of this Court.

Not Reported in N.Y.S.2d, 2000 WL 33421394 (N.Y.Sup.), 2000 N.Y. Slip Op. 40009(U) (Cite as: 2000 WL 33421394 (N.Y.Sup.)) $^{\circ}$

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People v. Owens
Not Reported in N.Y.S.2d, 2000 WL 33421394
(N.Y.Sup.), 2000 N.Y. Slip Op. 40009(U)

Westlaw.

Page 1

Not Reported in N.Y.S.2d, 2000 WL 33421395 (N.Y.Sup.), 2000 N.Y. Slip Op. 40010(U) (Cite as: 2000 WL 33421395 (N.Y.Sup.))

NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE THE PEOPLE OF THE STATE OF NEW YORK,

JOHN OWENS, Defendant.

Ind. # 547/99 Consolidated with #414/99 DATED: July 7, 2000, Rochester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Special Assistant District Attorney JOANNE M. WINSLOW, ESQ. Assistant District Attorney

D. MICHAEL MURRAY, ESQ. PETER J. PUL-LANO, ESQ Attorneys for the Defendant

EGAN, J.:

*1 This is a death penalty case. Defendant John Owens is charged with two counts of Murder in the First Degree, three counts of Murder in the Second Degree, and three counts of Rape in the First Degree. The District Attorney's office filed a Notice of Intent To Seek The Death Penalty pursuant to CPL §250.40 on January 24, 2000.

Defendant challenges the so-called life and death qualification of a prospective capital jury pursuant to CPL §270.20. CPL §270.20(1)(f) permits the removal for cause of a prospective juror who "entertains such conscientious opinions either against or in favor of such punishment as to preclude such juror from rendering an impartial verdict" or determining a sentence pursuant to CPL §400.27. Id.

In drafting CPL §270.20 the New York State Legislature conformed with the standards set by the United States Supreme Court in determining when such qualification of a jury was constitutional under our Federal constitution. See Morgan v. Illinois, 504 US 719 (1992) (life qualification); Lockhart v. McCree, 476 US 162 (1986) (death qualification); Wainwright v. Witt, 469 US 412 (1985), quoting Adams v. Texas, 448 US 38, 45 (1980) ("the proper standard for determining when a prospective juror may be excluded for cause because of his. .views on capital punishment . . . is whether the juror's views would 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath").

Further, the courts of New York uniformly have found the so-called life and death qualification provision to be sound under our State constitution. People v. Santiago, unpublished, p. 2 (Mon. Cty. Ct. [Bristol, J.] (December 21, 1999); People v. Cahill, unpublished, p. 8-10 Indictment #98/3434, (Onondaga Cty. Ct. [Burke, J.] April 27, 1999); People v. Arrovo, 178 Misc. 2d 362, 365 (Schoharie Cty. Ct. 1998); People v. Van Dyne, unpublished, p. 6 (Mon. Cty. Ct. [Marks, J.] (September 18, 1998); People v. Harris, 176 Misc. 2d 967, 970-71 (Sup. Ct. Kings Cty. 1998) (no facial constitutional defect); People v. Matco, 175 Misc. 2d 192, unpublished portion, p. 58-9 (Mon. Cty. Ct. [Connell, J.] 1997); People v. Hale, 173 Misc. 2d 140, 190-94 (Sup. Ct. Kings Cty. 1997); People v. Chinn, Nov. 19, 1996 NYLJ, at 31, col. 3 (Onondaga, Cty. Ct. 1996). This Court also finds CPL §270.20 is not facially unconstitutional.

*2 Defendant also argues that CPL \$270.20 does not give him sufficient leeway to "life-qualify" the jury, more specifically, to identify and remove potential jurors who would always favor the death penalty, regardless of any mitigating factors. See Morgan v. Illinois, supra at 732. Defendant emphasizes that CPL \$270.20 permits him only to exclude for cause those potential jurors

whose conscientious opinions "preclude" them both from being fair and impartial, and from considering alternatives to a death sentence, and not those jurors whose views would "impair" those abilities.

This Court is not persuaded by Defendant's attempt to lower the constitutional threshold set for exclusion by the United States Supreme Court. Loekhart v. McCree, supra. This Court finds that the plain meaning of the term "preclude" is consistent with the phrase "prevent or substantially impair." See McKinney's Cons. Laws of NY, Book 1, Statutes §150 (e) (a court must construe a statute, if possible, in harmony with constitutional mandates); People v. Hale, supra at 193 (where the court concluded that if a juror's ability to be fair and impartial, and to abide by his oath is "substantially impair[ed]", that juror is "preeluded" from so aeting). Cf. People v. Hansen, unpublished, p. 29 (Albany Cty. Ct. [Rosen, J.] March 31, 1998); People v. McIntosh, 173 Misc. 2d 724, 727 (Dutchess Cty. Ct. 1997) (where the court allowed defense challenges for cause when advanced against those prospective jurors whose views in favor of the death penalty would preclude or "substantially impair" those jurors' ability to perform their duty in accord-

Since this Court finds that the life and death qualification of a capital jury is constitutional, it need not, as Defendant suggests, defer such qualification of the jury until the sentencing phase, and/ or empanel separate juries for the guilt and sentencing phase of the trial.

Finally this Court finds no merit to Defendant's claim that CPL §270.20 violates his right to be tried by a jury composed of a fair cross-section of the community. See Lockhart v. McCree, 476 US at 174 ("groups defined solely in terms of shared attitudes that would prevent or substantially impair members of the group from performing one of their duties as jurors. . . are not 'distinctive groups' for [Sixth Amendment] fair-cross-section violations").

Defendant's motion is denied.

This shall constitute the Opinion, Decision and Order of this Court.

ZYNY
People v. Owens
Not Reported in N.Y.S.2d, 2000 WL 33421395
(N.Y.Sup.), 2000 N.Y. Slip Op. 40010(U)



Not Reported in N.Y.S.2d, 2000 WL 33421393 (N.Y.Sup.), 2000 N.Y. Slip Op. 40008(U) (Cite as: 2000 WL 33421393 (N.Y.Sup.))

NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS, NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE
THE PEOPLE OF THE STATE OF NEW YORK,

JOHN OWENS, Defendant.

Ind. #547/99 Consolidated with #414/99 DATED: June 21, 2000, Rochester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Special Assistant District Attorney JOANNE M. WINSLOW, ESQ. Assistant District Attorney

D. MICHAEL MURRAY, ESQ. PETER J. PUL-LANO, ESQ. Attorneys for the Defendant

EGAN, J.:

*1 This is a death penalty case. Defendant John Owens is charged with two counts of Murder in the First Degree, three counts of Murder in the Second Degree, and three counts of Rape in the First Degree. The District Attorney's office filed a Notice of Intent To Seek The Death Penalty pursuant to CPL §250.40 on January 24, 2000.

Defendant now moves to strike the Death Notice by challenging the procedures adopted by the New York Department of Correctional Services for administering a sentence of death by lethal injection. See Corrections Law §658. In the alternate, Defendant seeks to stay his potential execution until constitutionally acceptable procedures have been implemented. Defendant urges that the current procedures create a substantial and unnecessary risk that his potential execution will be painful and tor-

turous and therefore are in violation of his rights safeguarded under our state and federal constitutions. See New York Const., Art. I.; U.S. Const., Amds. 5th, 6th, 8th and 14th. In support, Defendant highlights examples of executions in other states that have not resulted in immediate death. Defendant also submits an affidavit of anesthesiologist who analyzed the Department of Correction Services guidelines and found them wholly inadequate to ensure a constitutionally sound execution.

This Court lacks jurisdiction to entertain whether the procedures adopted by the Department of Correction Services are adequate. Accord People v. Santiago, unpublished, p.1 (Mon. Cty. Ct. [Bristol, J.] (January 6, 2000); People v. Mateo, unpublished, p. 2 (Mon. Cty. Ct. [Connell, J.] (January 27, 1999); People v. Page, unpublished, p. 1 (Kings Cty. Ct. [Hall, J.] (October 27, 1998); People v. Harris, July 7, 1998 NYLJ, p. 30, col 4 (Sup. Ct., Kings Cty. 1998). This Court thus declines to consider whether the matter is ripe for its review. Cf. People v. Santiago, supra; People v. Page, supra; People v. Arroyo, 178 Misc. 2d 653, 654 n.1 (Schoharie Cty. Ct. 1998).

Defendant's motion is denied.

This shall constitute the Opinion, Decision and Order of this Court

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People v. Owens

Not Reported in N.Y.S.2d, 2000 WL 33421393 (N.Y.Sup.), 2000 N.Y. Slip Op. 40008(U)

Westlaw.

Page 1

185 Misc.2d 490, 713 N.Y.S.2d 256, 2000 N.Y. Slip Op. 20435 (Cite as: 185 Misc.2d 490, 713 N.Y.S.2d 256)

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Supreme Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

John OWENS, Defendant.

July 7, 2000.

Defendant charged with first degree murder filed motion to declare the capital felony murder statute unconstitutionally vague and overbroad. The Supreme Court, Monroe County, David D. Egan, J., held that: (1) the statute was not unconstitutionally vague, and (2) the statute was not unconstitutionally underinclusive.

Motion denied.

West Headnotes

[1] Criminal Law 110 @===13.1

110 Criminal Law

110I Nature and Elements of Crime 110k12 Statutory Provisions

110k13.1 k. Certainty and Definiteness.
Most Cited Cases

(Formerly 110k13.1(1))

"Void for vagueness doctrine" requires that a penal statute provide a defendant with adequate notice of the conduct prohibited, while affording "law enforcement officials some objective standard to avoid 'the possibility that the law will be arbitrarily enforced'".

[2] Constitutional Law 92 5-1030

92 Constitutional Law

92VI Enforcement of Constitutional Provisions 92VI(C) Determination of Constitutional

Questions

92VI(C)4 Burden of Proof

92kI030 k. In General. Most Cited

Cases

(Formerly 92k48(1))

Defendant bears the heavy burden of overcoming the presumption of a statute's constitutionality.

[3] Homicide 203 576

203 Homicide

203III Homieide in Commission of or with Intent to Commit Other Unlawful Act

203III(A) In General

203k576 k. Constitutional and Statutory

Provisions. Most Cited Cases (Formerly 203k8)

Use of phrases "in the course of" and "in furtherance of" in the eapital felony murder statute did not make the statute unconstitutionally vague. McKinney's Penal Law § 125.27, subd. 1(a)(vii).

[4] Homicide 203 🗫 576

203 Homicide

2031ll Homicide in Commission of or with Intent to Commit Other Unlawful Act

203HI(A) In General

203k576 k. Constitutional and Statutory

Provisions. Most Cited Cases

(Formerly 203k8)

Capital felony murder statute was not irrationally under-inclusive because it rendered deatheligible murder committed during certain felonies, but excluded other murders committed during felonies; sufficient reasons existed, including the level of violence associated with the felony committed during a murder, to justify the distinctions drawn by the legislature. McKinney's Penal Law § 125.27, subd. 1(a)(vii).

[5] Homicide 203 €---576

203 Homieide

2031II Homicide in Commission of or with Intent to Commit Other Unlawful Act

203III(A) In General

203k576 k. Constitutional and Statutory Provisions. Most Cited Cases 185 Mise.2d 490, 713 N.Y.S.2d 256, 2000 N.Y. Slip Op. 20435 (Cite as: 185 Misc.2d 490, 713 N.Y.S.2d 256)

(Formerly 203k8)

Exclusion of premeditated murders from the list of death-eligible murders did not render the capital felony murder statute unconstitutionally underinclusive. McKinney's Penal Law § 125.27, subd. 1(a)(vii).

**257*490 D. Miehael Murray, Batavia, and Peter J. Pullano, Rochester, for defendant.

Howard R. Relin, District Attorney of Monroe County (Michael C. Green and Joanne M. Winslow, Rochester, of counsel), for plaintiff.

DAVID D. EGAN, J.

Defendant moves this Court to declare Penal Law § 125.27(1)(a)(vii) unconstitutionally vague and overbroad because it *491 includes certain phrases that "fail[] to receive consistent definitions." Defendant argues that the phrases "in the course of" and "in furtherance of" run afoul of his State and Federal Constitutional protections. See New York Const., Art. I.; U.S. Const., 5th, 6th, 8th and 14th Amends. Defendant seeks to have this Court dismiss the First Degree Murder counts of the indictment, or preclude their application to him. The People oppose his motion.

[1][2] The "void for vagueness" doctrine requires that a penal statute provide a defendant with adequate notice of the conduct prohibited, while affording "law enforcement officials some objective standard to avoid 'the possibility that the law will be arbitrarily enforced.' "People v. First Meridian Planning Corp., 86 N.Y.2d 608, 621-22, 635 N.Y.S.2d 144, 658 N.E.2d 1017 (1995), quoting People v. Bright, 71 N.Y.2d 376, 384, 526 N.Y.S.2d 66, 520 N.E.2d 1355 (1988). Defendant bears the heavy burden of overcoming the presumption of a statute's constitutionality. Id., at 621-22, 635 N.Y.S.2d 144, 658 N.E.2d 1017.

[3] For years in the context of New York's noncapital felony murder statute, Penal Law § 125.25 (3), the phrases "in the course of" and "in furtherance of have implicitly passed constitutional muster. FN1 **258 People v. Bornholdt, 33 N.Y.2d 75, 350 N.Y.S.2d 369, 305 N.E.2d 461 (1973); People v. Britt, 212 A.D.2d 1034, 623 N.Y.S.2d 58 (4th Dept.1995); see also, People v. Couser, 258 A.D.2d 74, 695 N.Y.S.2d 781 (4th Dept.1999). Nothing compels a different result under Penal Law 125.27(1)(a)(vii). Accord People v. Santiago, Monroe County Ct., Bristol, J. (January 14, 2000); People v. Gordon, 175 Misc.2d 67, 77, 667 N.Y.S.2d 626 (Sup.Ct., Queens Cty. 1997); People v. Bell. p. 17 (Sup.Ct., Queens Cty. [Cooperman, J.] May 8, 1997); People v. Mateo, 175 Misc.2d 192, 200-01, 664 N.Y.S.2d 981 (Mon.Cty.Ct.1997).

FN1. The language of Penal Law § 125.27 (1)(a)(vii) is nearly identical to the language of Penal Law § 125.25(3). The sole distinction between the two statutes is the element of intent. Specifically, for a murder to be elevated to a capital offense under Penal Law § 125.27(1)(a)(vii), it must be intentionally committed in the course of, and in furtherance of, a felony.

[4] Defendant also asserts that Penal Law § 125.27(1)(a)(vii) is irrationally under-inclusive in that it renders death-cligible murder committed during eertain felonics, but excludes other murders committed during what Defendant describes as, "equally serious felonies, and premeditated murders." In support, Defendant cites proposed legislation to amend the existing statute to include intentional murder committed during additional felonies, such as digital rape.

Defendant's argument is incongruous in the context of this case. Defendant does not argue that an intentional murder *492 committed during the course of a rape should not be sanetionable by death, just that murders committed during other forms of sexual abuse merit the same sanetion. Defendant claims that this purported inconsistency renders the statute arbitrary.

A capital punishment statute need only

185 Misc.2d 490, 713 N.Y.S.2d 256, 2000 N.Y. Slip Op. 20435 (Cite as: 185 Misc.2d 490, 713 N.Y.S.2d 256)

"genuincly narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder." Zant v. Stephens, 462 U.S. 862, 877, 103 S.Ct. 2733, 77 L.Ed.2d 235 (1983). This court declines to thrust itself into the role of the legislature and determine which murders warrant the sanction of death. See Tuilaepa v. California, 512 U.S. 967, 974, 114 S.Ct. 2630, 129 L.Ed.2d 750 (1994); Gregg v. Georgia, 428 U.S. 153, 174-76, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976).

[5] Sufficient reasons exist, including the level of violence associated with the felony committed during a murder, to justify the distinctions drawn by the legislature. Accord People v. Bell, supra, at p. 15-16; cf. Gregg v. Georgia, supra.; Gray v. Lucas, 677 F.2d 1086, 1104 (5th Cir. 1982) (a legislature's designation of certain death eligible crimes should be given deference, unless clearly wrong). For the same reason this Court is not persuaded that the exclusion of premediated murders from the list of death-eligible murders renders the statute unconstitutional.

Defendant also argues that Penal Law § 125.27 (1)(a)(vii) has an unconstitutional disparate racial impact. This Court finds this argument is wholly without merit. People v. Hale, 173 Misc.2d 140, 159-60, 661 N.Y.S.2d 457 (Kings Cty. Sup. Ct.1997).

Defendant's motion is denied.

N.Y.Sup.,2000. People v. Owens 185 Misc.2d 490, 713 N.Y.S.2d 256, 2000 N.Y. Slip Op. 20435

Not Reported in N.Y.S.2d, 2000 WL 33421396 (N.Y.Snp.), 2000 N.Y. Slip Op. 40011(U) (Cite as: 2000 WL 33421396 (N.Y.Snp.))

NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE
THE PEOPLE OF THE STATE OF NEW YORK,
v.

JOHN OWENS, Defendant.

Ind. # 547/99 Consolidated with #414/99 DATED: August 17, 2000, Rochester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Special Assistant District Attorney DAVID A. FOSTER, ESQ. Assistant District Attorney

D. MICHAEL MURRAY, ESQ. PETER J. PUL-LANO, ESQ. Attorneys for the Defendant

EGAN, J.:

*1 This is a death penalty case. The District Attorney's office filed a Notice of Intent To Seek The Death Penalty pursuant to CPL §250.40 on January 24, 2000.

Defendant John Owens is charged under Indictment No. 547/99 with crimes against four victims arising out of separate incidents that occurred within a six month period between 1998-1999. Counts One and Three arise out of the murder of Rosenarie Constantino, who was killed in the course of a rape at Driving Park Avenue in the City of Rochester on April 28-29, 1999, and charge Defendant with Murder, First Degree (Penal Law §125.27 (a)(vii) and (b)), and Murder, Second Degree (Penal Law §125.25 (1)), respectively. Counts Two and Four of the same Indictment and Count One of Indictment No. 414/99 (previously consolidated by Order of this Court dated November 22,

1999) arise out of the murder and rape of Sherry Tuthill at 200 Merlin Street, City of Rochester on May 30 - June 1, 1999. Defendant is charged with Murder, First Degree (Penal Law §125.27 (a)(vii) and (b)), Murder, Second Degree (Penal Law §125.25 (1)) and Reckless or Depraved Indifference Murder, Second Degree (Penal Law §125.25 (2)) relating to this incident. Counts Five and Six both charge Defendant with Rape, First Degree (Penal Law §130.35 (1)), arising out of the alleged rapes of "R. L." on June 6, 1999. The final Count of the indictment alleges that Defendant raped "S. C." on Christmas Eve 1998, charging Rape, First Degree (Penal Law §130.35 (1)).

Defendant now moves for an Order granting severance, and separate trials with respect to each of the victims. This Court's analysis is guided by CPL \$200.20, and the eases construing it, and not the oft-cited notion of "heightened" due process, as Defendant argues.

All the homicides charged in the indictment, although based on separate criminal transactions, "are defined by the same or similar statutory provisions and consequently are the same or similar in law" (CPL §200.20 (2)(e)), and thus, are properly joinable. See People v. Lane, 56 NY 2d 1, 7 (1982); see also, People v. Bruce, 216 AD2d 913 (4th Dept. 1995) (affirming this Court's decision). Nor does this Court find, as Defendant contends, that it must sever the counts relating to the "R. L." and "S. C." rapes from those relating to the Constantino and Tuthill murders, because they are not "similar in law." The Appellate Division for the Fourth Department rejected a virtually identical claim in People v. Brown, 254 AD2d 781 (4th Dept. 1998) (finding the burglary of one vietim, and the burglary/homicide and attempted rape of a second vietim were "the same or similar in law" within the meaning of CPL §200,20 (2)(c)).

*2 While a court may grant a severance upon a showing of good cause" of any offense properly

joined under CPL §200.20 (2)(c), this Court finds that Defendant has failed to make a convincing showing FN1 that he would be unduly and genuinely prejudiced by the joint trial of all charges arising out of both the Constantino and Tuthill nurders, and the "R. L." rapes. See CPL §200.20 (3) (a), (b); People v. Lane, supra. at 8-9. Nor is this Court persuaded that the joinder of capital and non-capital offenses in the same trial will impermissibly taint the sentencing determination of the jury in violation of CPL §400.27. Cf. People v. Hansen, unpublished, pp. 13-14 (Albany Cty. Ct. [Rosen, J.] September 11, 1997).

FN1. Defendant, inter alia, highlights soeial science studies and empirical research suggesting the joinder for trial of two or more offenses has a prejudicial effect on the jury's verdict in violation of a Defendant's right to a fair trial. The People refute the validity of those studies.

This Court, however, does find a substantial difference with respect to the quantum of the People's proof against Defendant regarding the "S. C." rape, compared to the other crimes charged. See CPL §200.20(3)(a); People v. Sable, 138 A.D.2d 234 (1st Dept. 1988). Since there is "a substantial likelihood that the jury would be unable to consider separately the proof as it relates to [that] offense," the Seventh Count shall be severed, and a separate trial granted. See Id.

Accordingly, Defendant's motion for severanee and separate trials is granted as to the Seventh Count of the Indietment No. 547/99, charging Rape, First (Penal Law §130.35 (1)) upon the vietim "S. C.". Defendant's motion is denied as to all remaining eounts of the Indictment.

This shall constitute the Opinion, Decision and Order of this Court.

ZYNY People v. Owens Not Reported in N.Y.S.2d, 2000 WL 33421396 (N.Y.Sup.), 2000 N.Y. Slip Op. 40011(U)

Westlaw.

Page 1

Not Reported in N.Y.S.2d, 2000 WL 33421397 (N.Y.Sup.), 2000 N.Y. Slip Op. 40012(U) (Cite as: 2000 WL 33421397 (N.Y.Sup.))

NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT
COUNTY OF MONROE
THE PEOPLE OF THE STATE OF NEW YORK,

JOHN F. OWENS, Defendant.

Ind. #547/99 Consolidated with #414/99 DATED: August 30, 2000, Rochester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Special Assistant District Attorney DAVID A. FOSTER, ESQ. Assistant District Attorney

D. MICHAEL MURRAY, ESQ. PETER J. PULLANO, ESQ. Attorneys for the Defendant

EGAN, J.:

*1 This is a death penalty ease. The District Attorney's office filed a Notice of Intent To Seek The Death Penalty pursuant to Criminal Procedure Law (CPL) §250.40 on January 24, 2000.

Defendant challenges the constitutionality of CPL \$400.27 (11) (a) arguing its second clause provides for a vague and standardless determination of punishment by a sentencing jury. CPL \$400.27 (11) (a) provides in part: "The jury may not direct imposition of a sentence of death unless it unanimously finds beyond a reasonable doubt that the aggravating factor or factors substantially outweigh the mitigating factor or factors established, if any, and unanimously determines that the penalty of death should be imposed." Id. Defendant specifically claims that when the jury undertakes the second tier determination, it is not guided by objective standards, and thus is allowed the

"unbridled discretion" denounced in Penry v. Lynaugh, 492 US 302, 326 (1989).

To pass constitutional muster, the death penalty may "not be imposed under sentencing procedures that create[] a substantial risk that it [will] be inflicted in an arbitrary and capricious manner." Gregg v. Georgia, 428 US 153, 188 (1976) (reaffirming the holding in Furman v. Georgia, 408 US 238 (1972).) Thus, a "State must establish rational criteria that narrow the decisionmaker's judgment as to whether the circumstances of a particular defendant's case meet the threshold." McCleskey v. Keinp, 481 US 279, 305 (1987).

The capital sentencing scheme meets the standards of the New York and United States Constitutions. Accord, People v. McIntosh, 178 Misc. 2d 433 (Dutchess Cty. Ct. 1998); People v. Harris, 177 Misc. 2d 368 (Kings Cty. Ct. 1998); People v. Mateo, 175 Misc 2d 192, 226 (Mon. Cty. Ct. 1997). Penal Law §125.27(1) " 'genuinely narrow[s] the elass of persons eligible for the death penalty' ' delineating twelve distinct aggravating factors that raise the gravity of their crimes above other murders. See Lowenfield v. Phelps, 484 US 231, 244 (1988) FN I. CPL §400.27 then employs a balancing test, justifying the imposition of a death sentence in only those cases where those aggravating factors proved at trial substantially outweigh all mitigating evidence. See CPL §§400.27(3), (6), and (11). CPL \$400.27(3) provides for an individualized sentencing determination by allowing the Defendant to challenge any aggravating factor by presenting mitigating evidence "concerning the erime, the defendant's state of mind or condition at the time of the crime. . ." even in hearsay form. See CPL §400,27(9) (f). An individual juror may consider any mitigator, if it was proved by Defendant to the satisfaction of such juror by a preponderance of the evidence. Unanimity is not required. CPL §400.27 (11) (a).

FN1. As the United States Supreme Court

noted there is "...no reason why this narrowing function may not be performed by jury findings at either the sentencing phase of the trial or the guilt phase." Lowenfield, supra, at 244-45.

*2 The Supreme Court has held that such a weighing process alone is sufficient for the imposition of a death sentence. See Blystone v. Pennsylvania, 494 US 299 (1990); Boyde v. California, 494 US 370 (1990). Instead CPL §400.27 (11) (a) provides an additional safeguard for a defendant facing the death penalty. The weighing process is a prerequisite to the senteneing jury's "unanimous determin[ation] that the penalty of death should be imposed." Id. CPL §400.27 (11) (a) thus empowers the jury to exercise merey and deeline to impose the death penalty even if it has found, after weighing both aggravating and mitigating factors, that death is otherwise warranted Despite Defendant's arguments otherwise, no further guidelines are constitutionally required at this stage of the jury's deliberations. See Tuilaepa v. California, 512 US 967, 979-80 (1994) ("[a] capital sentencer need not be instructed how to weigh any particular fact in the eapital sentencing decision.")

Defendant's argument that CPL §400.27 (11) undermines appellate review is also without merit. Subparagraph (b) of that section specifically provides, "[i]f the jury directs imposition of either a sentence of death or life imprisonment without parole, it shall specify on the record those mitigating and aggravating factors considered and those mitigating factors established by the defendant, if any." CPL §400.27 (11) (b).

Defendant also argues that since CPL §400.27 (11) (a) provides for an individual juror's consideration of mitigating factors it is unconstitutionally permissive. The statute states that "[a]ny member or members of the jury who find a mitigating factor to have been proven by the defendant by a preponderance of the evidence may consider such factor established regardless of the number of jurors who concur that the factor has been established." Id.

(Emphasis added.) Defendant claims that the use of the permissive word "may" instructs a juror not to consider a mitigating factor even if he believes it was established. This Court finds that the plain meaning of the statute actually bodes in favor of the Defendant, by encouraging individual jurors to stand by their personal convictions, "regardless of the number of jurors who concur" with them. See Id.

Defendant's motion is denied in its entirety.

This shall constitute the Opinion, Decision and Order of this Court.

ZYNY
Pcople v. Owens
Not Reported in N.Y.S.2d, 2000 WL 33421397
(N.Y.Sup.), 2000 N.Y. Slip Op. 40012(U)



Not Reported in N.Y.S.2d, 2000 WL 33421398 (N.Y.Sup.), 2000 N.Y. Slip Op. 40013(U) (Cite as: 2000 WL 33421398 (N.Y.Sup.))

NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE THE PEOPLE OF THE STATE OF NEW YORK

v.
JOHN F. OWENS, Defendant.

Ind. #547/99 Consolidated with #414/99 DATED: August 31, 2000, Rochester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Assistant District Attorney DAVID A. FOSTER, ESQ. Assistant District Attorney

D. MICHAEL MURRAY, ESQ. PETER J. PUL-LANO, ESQ. Attorneys for the Defendant

EGAN, J.:

*1 This is a death penalty case. Defendant John F. Owens is charged with two counts of Murder in the First Degree, three counts of Murder in the Second Degree, and three counts of Rape in the First Degree. This Court severed for trial one count of Rape, First Degree relating to victim "S.C." by Order and Decision dated August 17, 2000, and entitled DEF-32. The District Attorney's office filed a Notice of Intent To Seek The Death Penalty pursuant to Criminal Procedure Law ("CPL") §250.40 on January 24, 2000. With no bail request made to date, Defendant is currently being held in the Monroe County Jail awaiting his trial.

Defendant renews his request for this Court to inspect and release the stenographic minutes of the Grand Jury proceedings pursuant to CPL §§210.30 and 190.25(4)(a), and asks this Court for an order dismissing or reducing the Indictment pursuant to

CPL §§210.20 and 210.35. This Court denied Defendant's request to release the Grand Jury minutes, and did not reduce or dismiss the Indictment in its Order and Decision dated April 19, 2000 and entitled DEF-11.

This Court's second in camera review of the Grand Jury minutes and exhibits revealed nothing different than its first: the Grand Jury proceeding was not defective, and the legal instructions to the Grand Jury were properly recorded and legally sufficient. See People v. Calbud, 49 NY2d 389 (1980). No arguments advanced by the Defense has convinced this Court that the release of the minutes is required under CPL §210.30(3) to assist this Court in its determination.

Defendant urges, inter alia, that the Indictment should be dismissed because the Grand Jury presentation was conducted before fewer than sixteen jurors, or fewer than twelve jurors heard all the evidence and voted for the Indictment. The Grand Jury presentation was conducted before twenty-one jurors, and more than twelve voted for Indictment No. 547/99. The Grand Jury presentation was conducted before twenty-two jurors, and more than twelve voted for Indictment No. 414/99, which this Court subsequently consolidated with Indictment No. 547/99, by Order and Decision dated November 22, 1999, and entitled DA-1.

Accordingly, Defendant's motion to dismiss or reduce the Indictment pursuant to CPL §§210.30 is denied. Defendant's renewed motion to release the Grand Jury minutes pursuant to CPL §§210.20 and 210.35 is also denied.

This shall constitute the Opinion, Decision and Order of this Court.

ZYNY
People v. Owens
Not Reported in N.Y.S.2d, 2000 WL 33421398
(N.Y.Sup.), 2000 N.Y. Slip Op. 40013(U)



Not Reported in N.Y.S.2d, 2000 WL 33421399 (N.Y.Sup.), 2000 N.Y. Slip Op. 40014(U) (Cité as: 2000 WL 33421399 (N.Y.Sup.))

NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE
THE PEOPLE OF THE STATE OF NEW YORK

v.
JOHN F. OWENS, Defendant.

Ind. #547/99 consolidated with #414/99 DATED: September 14, 2000, Rochester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Assistant District Attorney DAVID A. FOSTER, ESQ. Assistant District Attorney

D. MICHAEL MURRAY, ESQ. PETER J. PUL-LANO, ESQ. Attorneys for the Defendant

EGAN, J.:

*1 This is a death penalty case. Jury selection commenced on September 6, 2000.

Defendant moves for an order to individually voir dire each prospective juror in this case concerning such venireperson's qualifications to serve as a trial juror. CPL §270.16(1) provides that in a capital case, "the court shall, upon motion of either party, permit the parties, commencing with the people, to examine the prospective jurors individually and outside the presence of the other prospective jurors regarding their qualifications to serve as jurors." Id. The People take no position on Defendant's motion.

Defendant's motion entitled DEF-46 is granted, and individual voir dire shall commence on or after September 27, 2000.

Under the veil of heightened due process that Defendant alleges should be afforded all capital murder cases, Defendant seeks to alternate the order of the initial voir dire of each of the prospective jurors between the District Attorney and the defense. In support, Defendant relies on social science studies that suggest that by questioning prospective jurors first, the District Attorney, will impart upon them an indelible impression in favor of the death penalty.

CPL §270.15(1)(e) mandates that "[t]he court shall permit both parties, commencing with the people, to examine the prospective jurors . . " ld. (Emphasis added.) Defendant avers that CPL §270.15(1)(e)'s requirement that the People commence voir dire, only applies to the initial questioning of the first prospective juror. A plain reading of the statute and traditional practice suggests the contrary. People v. Arroyo, 178 Misc. 2d 362, 365 (Schoharie Cty. Ct. 1998); People v. Mateo, unpublished p.6 (Mon. Cty. Ct. [Connell, J.] September 17, 1998). This Court once again declines to thrust itself into the role of the legislature to deviate from the proscribed order of voir dire set forth in CPL §270.15(1)(c).

Defendant's motion entitled DEF-43 is denied.

This shall constitute the Opinion, Decision and Order of this Court.

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People v. Owens Not Reported in N.Y.S.2d, 2000 WL 33421399 (N.Y.Sup.), 2000 N.Y. Slip Op. 40014(U)



Not Reported in N.Y.S.2d, 2000 WL 33421400 (N.Y.Sup.), 2000 N.Y. Slip Op. 40015(U) (Cite as: 2000 WL 33421400 (N.Y.Sup.))

NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE
THE PEOPLE OF THE STATE OF NEW YORK

JOHN F. OWENS, Defendant.

Ind. #547/99 Consolidated with Ind. #414/99 DATED: September 14, 2000, Rochester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Assistant District Attorney DAVID A. FOSTER, ESQ. Assistant District Attorney

D. MICHAEL MURRAY, ESQ. PETER J. PUL-LANO, ESQ. Attorneys for the Defendant

EGAN, J.:

*1 This is a death penalty case. Jury selection recently commenced. Defendant John Owens is charged under Indictment No. 547/99 with crimes against four victims arising out of separate incidents that occurred within a six month period between 1998-1999. Counts One and Three arise out of the alleged rape and murder of Rosemarie Constantino on April 28-29, 1999, and charge Defendant with Murder, First Degree (Penal Law §125.27 (a)(vii) and (b)), and Murder, Second Degree (Penal Law §125.25 (1)), respectively. Counts Two and Four of the same Indictment and Count One of Indictment No. 414/99 (previously consolidated by Order of this Court dated November 22, 1999) arise out of the alleged rape and murder of Sherry Tuthill on May 30 - June 1, 1999. Defendant is charged with Murder, First Degree (Penal Law

§125.27 (a)(vii) and (b)), Murder, Second Degree (Penal Law §125.25 (1)) and Reckless or Depraved Indifference Murder, Second Degree (Penal Law §125.25 (2)) relating to Tuthill. Counts Five and Six both charge Defendant with Rape, First Degree (Penal Law §130.35 (1)), arising out of the alleged rapes of "R. L." on June 6, 1999. The final Count charges Defendant with Rape, First Degree (Penal Law §130.35 (1)) of "S. C." on Christinas Eve 1998. By previous Order of this Court the Rape, First Degree eharge relating to victim "S.C." was severed for trial.

Defendant argues that the impancling of a separate sentencing jury is inevitable in this case because Defendant will be tried for crimes arising out of three distinct transactions, with three separate victims. Defendant thus once again challenges the so-called death qualification of the guilt-phase jury pursuant to CPL §270.20. CPL §270.20(1)(f) permits the removal for eause of a prospective juror who "entertains such conscientious opinions either against or in favor of such punishment as to preclude such juror from rendering an impartial verdict" or determining a sentence pursuant to CPL §400.27. Id.

In a decision entitled DEF-15 &16, this Court found the life and death qualification of a capital jury constitutionally sound under both our state and federal constitutions. People v. Owens, DEF-15 & 16, unpublished (Sup. Ct., Mon. Cty. [Egan, J.] July 7, 2000). Nothing warrants a change in this Court's earlier decision.

Nor is this Court convineed that impanelment of a separate sentencing jury is inevitable. Criminal Procedure Law §400.27(2) provides "[b]efore proceeding with the jury that found the defendant guilty, the court shall determine whether any juror has a state of mind that is likely to preclude the juror from rendering an impartial decision based upon the evidence adduced during the proceeding." Id. Defendant may apply for a separate sentencing

Not Reported in N.Y.S.2d, 2000 WL 33421400 (N.Y.Sup.), 2000 N.Y. Slip Op. 40015(U) (Cite ss: 2000 WL 33421400 (N.Y.Sup.))

jury, if necessary, at that stage of the trial. Such application before that time would be premature. See People v. Mateo, unpublished, p. 3 (Monroe Cty. Ct. [Connell, J.] Sept. 17, 1998).

*2 Defendant's motion is denied.

This shall constitute the Opinion, Decision and Order of this Court.

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People v. Owens
Not Reported in N.Y.S.2d, 2000 WL 33421400
(N.Y.Sup.), 2000 N.Y. Slip Op. 40015(U)
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Page 1

Not Reported in N.Y.S.2d, 2000 WL 33421403 (N.Y.Sup.), 2000 N.Y. Slip Op. 40018(U) (Cite ns: 2000 WL 33421403 (N.Y.Sup.))

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NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE THE PEOPLE OF THE STATE OF NEW YORK

JOHN F. OWENS, Defendant.

Ind. #547/99 Consolidated with Ind. #414/99 DATED: September 29, 2000, Roehester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Assistant District Attorney DAVID A. FOSTER, ESQ. Assistant District Attorney

D. MICHAEL MURRAY, ESQ. PETER J. PUL-LANO, ESQ. Attorneys for the Defendant

EGAN, J.:

*1 In this unusual motion the People seek an order dismissing the charge of Rockless or Depraved Indifference Murder, Second Degree (Penal Law §125.25 (2)) pursuant to Criminal Procedure Law ("CPL") §210.40 in a capital ease. This Court, upon the People's request, consolidated Indictment No. 414/99 with Indictment No. 547/99, charging seven counts, including two counts of Murder, First Degree (Penal Law §125.27 (a)(vii) and (b)). People v. Owens, DA-1, unpublished (Mon. Cty. Ct. [Egan, J.] November 22, 1999.) Counts Two and Four of Indictment No. 547/99 and Count One of Indictment No. 414/99 arise out of the murder and rape of Sherry Tuthill on May 30 - June 1, 1999. Defendant is charged respectively with: Murder, First Degree (Penal Law §125.27 (a)(vii) and (b)), Murder, Second Degree (Penal Law §125.25 (1)) and Reckless or Depraved Indifference Murder, Second Degree (Penal Law §125.25 (2)) relating to this incident.

In support, the People argue that dismissing the depraved indifference murder charge will "streamline the ease for the trial . . . and . . . avert the possibility of inconsistent verdiets." Defendant opposes the People's motion arguing, inter alia, that the dismissal of the charge would deprive the jury of an alternate verdict to Murder, First Degree (Penal Law §125.27 (a)(vii) and (b)) [N1].

FN1. Defendant also argues that the language of CPL §210.40 (3) limits the People's right to seek a dismissal in the furtherance of justice to only indictments, and not counts thereof. Without reaching the issue, this Court finds such a narrow construction of the statute would render subparagraph three in conflict with subparagraph one. Cf. People v. Panibianci, 134 Mise, 2d 274, 276 (Sup. Ct. Mon. Cty. 1986), citing 22A CJS, Criminal Law, §456; 21 Am Jur 2d, Criminal Law, §512.

A court's power to dismiss pursuant to CPL §210.40, evolved from the common-law power of nolle prosequi under which the prosecuting attorney, at his sole discretion, could choose not to proseeute a case even after indictment, v. Wharton's Criminal Law and Procedure, pp. 225-28 (1957); People v. Quill, 11 Misc. 2d 512, 513 (King Cty. Ct. 1958). Under CPL §210.40's predecessor provision, Code Crim. Pro. §671, the power to dismiss an indietment was transferred from the prosecutor to the court. Since the honest labors of a Grand Jury should not be lightly set aside, CPL 8210.40 allows the letter of the law to succumb to the spirit of justice only in rare eircumstances. People v. Davis, 55 Misc. 2d 656, 659 (Sup. Ct. N.Y. Cty. 1969); People v. Williams, 140 Misc. 35, 36 (Otsego Cty.Ct. 1931).

*2 The People argue the catch-all provision of CPL §210.40 (1) (j), which allows a court to consider any "relevant fact indicating that a judgment of conviction would serve no useful purpose" in evaluating dismissal, vests this Court with authority to grant the requested dismissal. Id. This Court is not persuaded that a "judgment of conviction [on the depraved indifference murder charge] would serve no useful purpose." See Id.

This Court is also not convinced that dismissal is necessary to avert the possibility of inconsistent verdicts, as the People argue. Rather, this Court is confident that a jury will follow standard cautionary instructions. See People v. Berg, 59 NY2d 294, 299-300 (1983); but cf. People v. Gallagher, 69 NY2d 525 (1987). Further, this Court finds that dismissing the depraved indifference murder charge will not streamline the case for trial, as the People suggest. Two other counts of the consolidated indictment arise out of the murder and rape of the same victim, and will require essentially the same proofs.

The nine other factors enumerated in CPL §210.40^{FN2} also inilitate against dismissal. This Court thus finds no compelling reason for dismissing Count One of Indictment No. 414/99. This Court upheld the sufficiency of the findings of the Grand Jury, not on just onc, but two occasions. People v. Owens, DEF-26 & 33, unpublished (Sup. Ct. Mon. Cty. [Egan, J.] August 31, 2000); People v. Owens, 184 Misc. 2d 597 (Mon. Cty. Ct. 1999). This Court therefore will not invade the province of the Grand Jury, and undo their "honest labors" undertaken at the People's own behest. See People v. Willfains, supra.

FN2. CPL §210.40 (1) directs the court to consider, in its quest for "some compelling factor, consideration or circumstance clearly demonstrating that conviction of prosecution of the defendant upon such indictment or count would constitute or result in injustice * * *(a) the seriousness and circumstances of the offense;(b) the extent

of harm caused by the offense;(c) the evidence of guilt, whether admissible or inadmissible at trial;(d) the history, character and condition of the defendant;(e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant:(f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense:(g) the impact of a dismissal upon the confidence of the public in the criminal justice system;(h) the impact of a dismissal on the safety or welfarc of the community;(i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion;(j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose."

*3 The People's motion to dismiss Count One of Indictment No. 414/99 in the furtherance of justice is denied.

This shall constitute the Opinion, Decision and Order of this Court.

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People v. Owens

Not Reported in N.Y.S.2d, 2000 WL 33421403 (N.Y.Sup.), 2000 N.Y. Slip Op. 40018(U)

NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT
COUNTY OF MONROE
THE PEOPLE OF THE STATE OF NEW YORK

v. JOHN OWENS, Defendant.

Ind. #547/99 Consolidated with #414/99 DATED: October 6, 2000, Rochester, New York

On Behalf of the People: HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Assistant District Attorney DAVID A. FOSTER, ESQ. Assistant District Attorney

On Behalf of the Defendant: D. MICHAEL MUR-RAY, ESQ. PETER J. PULLANO, ESQ. Attorneys for the Defendant

EGAN, J.:

*1 A Dunaway, Mapp, Wade and Huntley hearing was conducted on July 31, August 1, August 2, and August 11, 2000 in response to Defendant John Owens' request for various relief. See People v. Owens, DEF-29, DEF-30 and DEF-34, unpublished (Sup. Ct. Mon. Cty. [Egan, J.], July 19, 2000); Dunaway v. New York, 442 US 200 (1979); United States v. Wade, 388 US 218 (1967); Mapp v. Ohio, 367 US 643 (1961); People v. Huntley, 15 NY2d 72 (1965). The following constitutes this Court's findings of fact and conclusions of law.

Defendant is charged under Indictment No. 547/99 with erimes against four victims arising out of separate incidents that occurred within a six month period between 1998-1999. Counts One and Three arise out of the alleged rape and murder of Rosemary Constantino on April 28-29, 1999, and

charge Defendant with Murder, First Degree (Penal Law §125.27(a)(vii) and (b)), and Murder, Second Degree (Penal Law §125.25(1)), respectively. Counts Two and Four of the same Indietment and Count One of former Indictment No. 414/99 arise out of the alleged rape and murder of Sherry Tuthill on May 30- June 1, 1999. See People v. Owens, DA-1, unpublished (Mon. Cty. Ct. [Egan. J.] November 22, 1999) (wherein this Court consolidated Indictment No. 547/99 with Indictment No.414/99). Defendant is charged with Murder, First Degree (Penal Law §125.27(a)(vii) and (b)), Murder, Second Degree (Penal Law §125,25(1)) and Reckless or Depraved Indifference Murder, Second Degree (Penal Law §125.25 (2)) relating to Tuthill. Counts Five and Six both charge Defendant with Rape, First Degree (Penal Law §130.35(1)), arising out of the alleged rapes of "R.L." on June 6, 1999. The final Count charges Defendant with Rape, First Degree (Ponal Law §130.35(1)) of "S.C." on Christmas Eve 1998. By previous Order of this Court the Rape, First Degree charge relating to victim "S.C." was severed for separate trial.

The Court has heard, and finds credible, the testimony of People's witnesses, Investigator Anthony Campione, Officer Mark Wiater, Officer Nicholas Mazzola, Officer Charles Gorman, Investigator Michael VanRoo, Sergeant John Gropp, Investigator Gary Galetta, Officer Brad Goater, Deputy Dean Caifano, Officer Paul Bushart, Officer Philip McTigue, Investigator Thomas Janus, Investigator Joseph Dominick, Investigator Terrance Sheridan and Investigator Evelyn Baez.

On December 24, 1998, at about 5:25a.m., Officer Nicholas Mazzola of the Rochester Police Department went to 7 Beach Street in Rochester in response to a report of rape made by S.C. Defendant John Owens answered the door, indicated he knew S.C., said she was at his residence earlier looking for money and that they had sexual relations at her request. The statements of Defendant to Officer Mazzola were procured at the investigatory stage of

the rape report during a "threshold police inquiry." Defendant was not in custody. See People v. Huffman, 41 NY2d 29, 34 (1976); People v. Mallory, 175 AD2d 623 (4th Dept. 1991).

*2 On the same day about 5:30a.m. Defendant voluntarily submitted to a show-up at 55 Saranac Street, Roehester at the request of Officer Mark Wiater and in front of S.C. who identified the Defendant. The facts reveal a rapidly unfolding report of erime. The show up was in close physical and temporal proximity to the crime. See People v. Duuvon, 77 NY2d 541, 543 (1991); People v. Rupert, 192 AD2d 1072 (4th Dept. 1993). There was nothing unduly suggestive about the show-up or the procedure used for the show-up. See United States v. Wade, 388 US 218 (1967). The show-up was eonfirmatory. See People v. Rodriguez, 79 NY2d 445 (1992). The witness S.C. has an independent basis for in-court identification of the Defendant. Cf. People v. Ballot, 20 NY2d 600 (1967).

Defendant was arrested after S.C. identified him as the alleged rapist and taken to the police station at Clinton Section in Rochester. This Court finds that the police had probable cause to arrest Defendant after the S.C. show-up identification. New York v. Giles, 239 AD2d 936, 937 (4th Dept. 1997); People v. Muldrow, 222 AD2d 1076 (4th Dept. 1995).

At about 6:16 a.m. at the station Defendant was advised of his Miranda warnings from a standard notification and waiver form (People's Exhibit No. 1). See Miranda v. Arizona, 384 US 436 (1966). He understood his rights and made a knowing, intelligent and voluntary waiver of those rights. See People v. Bradley, 195 AD2d 995 (4th Dept. 1993). There were no threats, promises or force used at any time to induce him to give up his rights and talk to the police. Cf. People v. Tarsia, 50 NY2d 1, 22 (1980). Defendant made oral statements and signed a written statement at 7:08 a.m. and was released shortly thereafter. Using a test of beyond a reasonable doubt, this Court finds that at no time during the events of December 24, 1998 was the

Defendant deprived of his rights under our federal or state Constitutions, statutes or case law.

Four months later on April 29, 1999, the Rochester Police Department discovered the body of Rosemary Constantino on the embankment of the Genesee River gorge, near the Driving Park bridge. The same day Earl Gaines met with Investigator Anthony Campione and told him he observed a light-skinned, black man talking with a small white woman the night before, near the bridge. As Mr. Gaines crossed the bridge, he heard a girl screaming loudly.

On June 3, 1999 Investigator Campione showed a six person photo array (People's Exhibit No. 10) to Earl Gaines at 672 Parsells Avenue, Rochester. Gaines identified the Defendant as the African-American male he observed on April 28, 1999. There was nothing unduly suggestive about the array or the procedure used in displaying it to Gaines. See People v. Sieteski, 241 AD2d 926, 928 (4th Dept. 1997); see also, People v. Chipp, 75 NY2d 327 (1990). The Gaines photo array identification was confirmatory and Gaines has an independent basis for in-court identification of the Defendant. See People v. Rodriguez, 79 NY2d 445 (1992). Gaines also provided the police with a supporting deposition (People's Exhibit No. 11).

*3 On June 4, 1999 Investigator Joseph Dominick met with George Mitchell an inmate at the Monroe County Jail, and showed him a six person photo array (People's Exhibit No. 16). Mitchell identified the Defendant. There was nothing unduly suggestive about the array or the procedure used in displaying it to Mitchell. See People v. Sieteski, supra; see also, People v. Chipp, supra. The Mitchell photo array identification was confirmatory and Mitchell has an independent basis for incourt identification of the Defendant. See People v. Rodriguez, supra.

On June 4, 1999 Investigator Campione showed a six person photo array (People's Exhibit No. 10) to Rayjohn McClurkin at 13 Burbank

Street, Rochester. McClurkin said that he couldn't be sure, but the Defendant looked like the man that he saw coming up out of the river gorge during the early morning hours of April 29, 1999. There was nothing unduly suggestive about the array or the procedure used in displaying it to McClurkin. See People v. Sieteski, supra; see also, People v. Chipp, supra.

On June 10, 1999 Investigator Anthony Campione and Evelyn Baez met with Rosenary Legg and showed her a six person photo array (People's Exhibit No. 13). Legg filed a police report alleging Defendant had raped her on June 6, 1999. Legg also provided the police with a Supporting Deposition (People's Exhibit No. 14). Legg identified the Defendant. There was nothing unduly suggestive about the array or the procedure used in displaying it to Legg. See People v. Sieteski, supra; see also People v. Chipp, supra. The Legg photo array identification was confirmatory and Legg has an independent basis for in-court identification of the Defendant. See People v. Rodriguez, supra.

On June 10, 1999 Investigator Terrance Sheridan met with Charles Coles at the Public Safety Building, Rochester and showed him a six person photo array (People's Exhibit No. 16). Coles identified the Defendant. There was nothing unduly suggestive about the array or the procedure used in displaying it to Coles. See People v. Sieteski, supra; see also, People v. Chipp, supra. Coles then agreed to point out to Investigator Sheridan the house on Orange Street, Rochester where prospective witness Queenie Jones lived. When Coles pointed out the Jones house he also identified the Defendant Owens, who by sheer happenstance was in that area. Coles' identification of the Defendant on Orange Street was inadvertent and not part of a police plan or arrangement to procure such identification. Cf. People v. Dixon, 85 NY2d 218, 223-24 (1995). Notably, Coles had previously identified Defendant from a non-suggestive six person photo array.

On June 10, 1999 Investigator Gary Galetta displayed a single photo of the Defendant to Betty

Owens at 104 Danforth Street, Rochester. She identified Defendant from the photograph (and also indicated that she is not a relative of Defendant). See Matter of James H., 34 NY2d 814, 816 (1974); People v. Smoot, 166 Misc. 2d 862, 868 (Sup. Ct. 1995) (one photograph identification ordinarily suggestive). Even if suggestive, Defendant was known to witness Betty Owens, as her son's friend and a former house guest, and thus the photo identification was confirmatory in nature. Ms. Owens has an independent basis for in-court identification of the defendant. See People v. Rodriguez, supra.

*4 On June 10, 1999 Investigator Anthony Campione and the Roehester Police had probable eause to arrest the Defendant based on a Rochester City Court arrest warrant for violation of probation. The police also had probable eause to arrest the Defendant on that date on the eharges of raping both S.C., and R.L., as well as on the eharge of raping and murdering Rosemary Constantino. New York v. Giles, supra., People v. Muldrow, supra.

About 10:15p.m. on the same date, the police began searching for Defendant Owens to bring him in on the outstanding Rochester City Court warrant and to question him. Defendant was found in a vacant lot near Portland and Whitney Streets in Rochester. Defendant was sweating and wearing blue semb pants that appeared to have blood on the "back of them. When asked, Defendant acknowledged he was John Owens, indicated he had no identification and explained that the apparent blood on the back of his pants was because he had sat on something and injured himself.

Defendant was under arrest but asked to be taken to his apartment to secure it before going downtown. He was driven to the apartment where Officer Evelyn Baez gave the house a walk around visual inspection, knocked on a door and looked in through a window to be sure no one was inside as Defendant feared. This Court finds Defendant consented to this eursory visual inspection. See People v. Love, ___ AD2d ___, ___ 710 N.Y. Supp 2d 491, 4922 (4th Dept. 2000) ("while consent to

'check' is not consent to scarch . . . the police did not search"); People v. Cruz, ___ AD2d ___, __ 709 N.Y. Supp 2d 717, 7211 (4th Dept. 2000) (a tenant has authority to consent to the scarch of his apartment). Defendant was informed that his residence was secure and was taken to the Public Safety Building, Roctester for questioning.

During the ride to the Defendant's residence and to the Public Safety Building, Defendant made spontaneous statements to the police which were derogatory toward women. Those statements were not included in the People's CPL §710.30(1) Notiee. The People are precluded from offering them in their case in chief at trial, CPL §710.30(3).

At the Public Safety Building in Rochester Defendant was given coffee at about 10:40p.m. and was properly cheeked for injuries by the police. For approximately twelve minutes, the police questioned Defendant concerning his pedigree, and to establish his ability to understand both his rights and the questions posed by them. Answers given in response to "routine booking questions" fall outside the protection of Miranda if they are "reasonably related to the police's administrative concerns." Pcople v. Rodney, 85 NY2d 289, 292-93 (1995), citing Pennsylvania v. Muniz, 496 US 582, 601-02 (1990). The People, however, may not rely upon the pedigree exception if the inquiry, though facially appropriate, is likely to elicit incriminating admissions. Id.

*5 Officer Anthony Campione asked Defendant if he had been arrested in the past. Officer Campione's question was "reasonably anticipated to evoke a deelaration" from the Defendant, and thus Defendant's response shall be suppressed. See People v. Lynes, 49 NY2d 286, 293-95 (1980); cf. People v. Deacon, 226 AD2d 1120 (4th Dept. 1996). In addition, the admissibility of Defendant's prior arrest record shall be governed by this Court's decisions on both the People's Molineux and Sandoval Notices. See People v. Sandoval, 34 NY2d 371 (1974); People v. Molineux, 168 NY 264 (1901). Defendant's spontaneous statement that he met and/or

talked with a known convicted murderer in jail is irrelevant, since its potential prejudicial effect outweighs any probative value, and may not be used at Defendant's trial. See generally, People v. Whitfield, 144 AD2d 915, (4th Dept. 1988).

At about 10:52p.m. Investigator Campione read the Defendant his Miranda warnings from a standard notification and waiver form (Pcople's Exhibit No. 4). See Miranda v. Arizona, supra. Defendant made a knowing, intelligent and voluntary waiver of his rights and agreed to talk to the police. Pcople v. Bradley, supra. No force, threat or duress was used at any time to induce the Defendant to waive his rights and talk to the police. The police did not have an obligation to inform Defendant that he was a suspect in a murder or a capital murder before obtaining his waiver of his Miranda rights, as the defense argues. People v. Schleyer, 236 AD2d 835, 836 (4th Dept. 1997); cf. People v. Tarsia, supra.

Defendant made statements to the police at 11:55p.m. concerning sexual activities with R.L., then he was given coffee and allowed to go to the bathroom. At about midnight the Defendant made a statement concerning sexual activities with S.C. that took place on December 24, 1998 and continued to talk about S.C. and R.L.

At about 3:00a.m. June 11, 1999 Defendant agreed to have his statement concerning sexual activities with R.L. reduced to writing. Investigator Campione completed typing the statement at 3:40a.m. Defendant was then given a bathroom break. Investigator Dominick typed Defendant's statement concerning S.C. while Investigator Campione went to get Defendant a chicken sandwich, a ham/cheese sandwich, chips and a soda. Defendant and Investigator Dominick completed the statement on S.C. at 4:10a.m. Defendant signed both statements (People's Exhibit Nos. 5 & 6).

About the same time, at approximately 3:40a.m., Officer Baez returned to the vacant lot where Defendant was arrested and found Defendant's missing wallet. There is no legal basis for sup-

pression of the wallet and its contents. See People v. Yamagata, 208 AD2d 1120, 1121 (3rd Dept. 1994).

*6 At about 4:28a.m, the police began talking with Defendant about the death of Rosemary Constantino and continued this questioning until about 6:10a.m. Defendant was given coffee during that time. From 6:10a.m. to 9:20a.m. the Defendant was allowed to sleep or rest alone in an interview room. At Defendant's request he was taken by the officiers to the bathroom at 9:20a.m. The People's CPL §710.30 Notice covers from 9:20a.m. to 9:50a.m. The police again questioned him about Rosemary Constantino's death. From 9:50a.m. to 10:30a.m. Defendant was left alone.

At 10:30a.m. Investigator Sheridan interviewed Defendant about the death of Sherry Tuthill. Defendant made statements about her death and when Investigator Campione re-entered the room, the Defendant reiterated his statements for Investigator Campione.

At about 1:02p,m. Defendant said he wanted to talk to an attorney and the interview ended. Any further questioning of Defendant by the police only pertained to pedigree information for a prisoner data report. Defendant was photographed and taken to booking, People v. Deacon, supra.

This Court concludes that between approximately 10:52p.m. on June 10, 1999 and 1:02p.m. of the next day, June 11, 1999, Defendant had voluntarily and intelligently waived his Miranda rights, and there was no need to re-Mirandize the Defendant. People v. Kemp, 266 AD2d 887 (4th Dept. 1999). Using a test of beyond a reasonable doubt, this Court finds that at no time on June 10, 1999 or June 11, 1999 was the Defendant deprived of his tights under our federal or state Constitutions, statutes or case law.

On June 11, 1999 Sergeant John Gropp met with Ginger Thompson at 73 Walnut Street, Roehester. Sergeant Gropp showed Thompson a six person photo array (People's Exhibit No. 51). Thompson identified the Defendant. There was nothing unduly suggestive about the array or the procedure used in displaying it to Thompson. See People v. Sieteski, supra; People v. Chipp, supra. The Thompson photo array identification was confirmatory and Thompson has an independent basis for in-eourt identification of the Defendant. See People v. Rodriguez, supra.

On June 14, 1999 Sergeant John Gropp met with Dawn Parker at 1070 Fawnwood Circle, Webster and showed her a six person photo array (People's Exhibit No. 18). Parker identified Defendant. There was nothing unduly suggestive about the array or the procedure used in displaying it to Parker. See People v. Sieteski, supra; see also, People v. Chipp, supra. Parker has an independent basis for in-court identification of the Defendant. See People v. Rodriguez, supra.

On June 15, 1999 Sergeant Gropp met with Thomas McCoy at 95 North Avenue, Webster and showed him the six person photo array (People's Exhibit No. 18). McCoy identified the Defendant. There was nothing unduly suggestive about the array or the procedure used in displaying it to McCoy. See People v. Sieteski, supra; see also, People v. Chipp, supra. McCoy has an independent basis for in-court identification of Defendant. See People v. Rodriguez, supra.

*7 On June 15, 1999 Demaine Jackson, a prospective witness arrived at the police homicide office for interview. Mr. Jackson noticed a photograph of Defendant Owens on the wall among other photos and indicated that he knew the Defendant. The Jackson photo identification of Defendant was inadvertent and not part of a police plan, arrangement or effort to secure such identification. Cf. Matter of James H., 34 NY2d 814, 816 (1974); People v. Smoot, 166 Misc. 2d 862, 868 (Sup. Ct., Kings Cty. 1995). Since Defendant was known to witness Jackson, the photographic identification was confirmatory in nature and he has an independent basis for in-court identification of the Defendent

ant. See People v. Rodriguez, supra.

On June 16, 1999 Investigator Thomas Janus met with prospective witness, Christopher Singleton at the Public Safety Building, Rochester and showed him the six person photo array (People's Exhibit No. 18). Singleton identified the Defendant. There was nothing unduly suggestive about the array or the procedure used in displaying it to Singleton. See People v. Sieteski, supra; see also, People v. Chipp, supra. Singleton has an independent basis for in-court identification of the Defendant. See People v. Rodriguez, supra.

On July 1, 1999 Investigator Gary Galetta displayed duplicate photographs of the Defendant to Paul Jones at his home at 27 Nye Park, Rochester (People's Exhibit No. 22). Jones marked on the photograph where he had observed scratches on Defendant's face in late April 1999. Defendant was known to Jones since 1996. The photo identification was confirmatory in nature and Jones has an independent basis for identification of the Defendant. See People v. Rodriguez, supra; cf. Matter of James H., supra. (one photograph identification ordinarily suggestive).

In summary, Defendant's contentions of unlawful actions by the police are not substantiated. The People met their burdens at the hearing establishing that the Defendant was lawfully detained, arrested, identified, questioned and searched on both December 24, 1998 and June 10-11, 1999. The seizure of his wallet, and cursory "check" of his apartment were also lawful. See People v. Love, supra; People v. Cruz, supra.

Defendant's suppression motion is therefore denied in its cutirety with two limited exceptions:

First, the People are precluded from offering in their case in chief at trial any derogatory remarks concerning women, which Defendant made during the ride to the Public Safety Building on June 10, 1999. CPL §710.30(3). Second, after arriving at the Public Safety Building, Defendant's response to the

police's question about whether he had been arrested in the past shall be suppressed, since the inquiry was "reasonably anticipated to evoke a declaration" from him. See People v. Lynes, supra.; cf. People v. Deacon, supra. The admissibility of Defendant's prior arrest record shall be governed by this Court's rulings on both the People's Molineux and Sandoval Notices. See People v. Sandoval, supra.; People v. Molineux, supra. Finally, Defendaut's spontaneous statements, made within the first twelve minutes of interrogation on June 10, 1999 regarding his in jail discussions with a known convicted murderer, are irrelevant and may not be used at Defendant's trial. See generally, People v. Whitfield, supra.

*8 This Decision shall constitute the Order of the Court.

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People v. Owens Not Reported in N.Y.S.2d, 2000 WL 33421405 (N.Y.Sup.), 2000 N.Y. Slip Op. 40020(U)

Westlaw,

Page 1

186 Misc.2d 923, 721 N.Y.S.2d 487, 2001 N.Y. Slip Op. 21096 (Cite as: 186 Misc.2d 923, 721 N.Y.S.2d 487)

Н

Supreme Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

John F. OWENS, Defendant.

Jan. 17, 2001.

Capital murder defendant moved to prohibit prosecution from using peremptory strikes against jurors who were not excludable for cause, but who had betiefs in opposition to death penalty, and also for order prohibiting court and prosecution from alerting prospective jurors of qualification standards for their service. The Supreme Court, Monroe County, David D. Egan, J., held that: (1) "death-scrupled" jurors are not a distinct group constitutionally protected from exercise of peremptory strikes based on their membership in that group, and (2) defendant was not entitled to protective order, as court was mindful of its voir dire obligations.

So ordered.

West Headnotes

[1] Jury 230 5-33(5.15)

230 Jury

230II Right to Trial by Jury
230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(5) Challenges and Objections

230k33(5.15) k. Peremptory Chal-

lenges. Most Cited Cases

Under Batson, a party may not use a peremptory challenge to strike a member of a constitutionally protected distinct group from a jury.

[2] Jury 230 €==33(5.15)

230 Jury

230II Right to Trial by Jury

230k30 Denial or Infringement of Right
230k33 Constitution and Selection of Jury
230k33(5) Challenges and Objections
230k33(5.15) k. Peremptory Challenges. Most Cited Cases

Prospective jurors who have beliefs in opposition to capital punishment do not constitute a distinct and cognizable group warranting constitutional protection, so that prosecution is not barred under *Batson* from exercising peremptory challenges against "death-scrupled" prospective jurors who are not otherwise excusable for cause. McKinney's CPL § 270.20.

[3] Jury 230 @==33(5.15)

230 Jury

230II Right to Trial by Jury

230k30 Denial or Infringement of Right

230k33 Constitution and Selection of Jury 230k33(5) Challenges and Objections

230k33(5.15) k. Peremptory Chal-

lenges. Most Cited Cases

A cognizable and distinct group, whose members are protected under *Batson* and its progeny from being removed as prospective jurors through peremptory challenges based on their membership in group, is not one whose sole common characteristic is a particular opinion about an issue.

[4] Jury 230 €=>131(13)

230 Jury

230V Competency of Jurors, Challenges, and Objections

230k124 Challenges for Cause

230k131 Examination of Juror

230k131(13) k. Mode of Examination.

Most Cited Cases

Capital murder defendant was not entitled to order prohibiting court and prosecution from alerting prospective jurors of qualification standards for their service; court was mindful of its voir dire obligations, and existing law governing jury selection 186 Misc.2d 923, 721 N.Y.S.2d 487, 2001 N.Y. Slip Op. 21096 (Cite as: 186 Misc.2d 923, 721 N.Y.S.2d 487)

would adequately address defendant's concerns regarding prosecution.

**488*923 Howard R. Relin, District Attorney of Monroe County (Michael C. Green and David A. Foster of counsel), for plaintiff.

Kevin M. Doyle, Capital Defender (William T. Easton and Patricia Warth, of counsel), and Peter J. Pullano, Rochester, for defendant.

*924 DAVID D. EGAN, J.

[1] This is a death penalty case. Defendant requests this Court to prohibit the People from using peremptory challenges to exclude any prospective juror who has beliefs in opposition to capital punishment, but is not otherwise excusable for eause pursuant to Criminal Procedure Law § 270.20. Under Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986) and its progeny, a party may not use a peremptory challenge to strike a member of a constitutionally protected "distinct group" from a jury. Defendant thus asks this Court to declare "death-scrupled" prospective jurors to be members of such a distinct group. The People oppose all Defendant's requests.

[2][3] Criminal Procedure Law ("CPL") § 270.25(1) provides in part that "[a] peremptory challenge is an objection to a prospective juror for which no reason need be assigned." See, Gray v. Mississippi, 481 U.S. 648, 667-68, 107 S.Ct. 2045, 95 L.Ed.2d 622 (1987) (a prosecutor's exercise of a peremptory challenge is not generally subject to judicial review, absent a Batson rule violation). This Court finds no reason to undermine the People's statutorily guaranteed right to exercise peremptory challenges in sclecting a jury. This Court does not find that "death-scrupled" jurors are a distinct and cognizable group warranting constitutional protection. Accord People v. Santiago (Mon.Cty.Ct. [Bristol, J.] February 17, 2000); People v. Bell (Queens Cty.Ct. [Cooperman, J.] February 9, 1999); People v. Mateo (Mon.Cty.Co. [Connell, J.] September 17, 1998). A cognizable and distinct

gronp is not one whose sole common characteristic is a particular opinion about an issue. People v. Bell, supra; see also, Willis v. Kemp, 838 F.2d 1510, 1514 (11th Cir.1988), cert. denied sub nom. **489Willis v. Zant, 489 U.S. 1059, 109 S.Ct. 1328, 103 L.Ed.2d 596 (1989); Barber v. Ponte, 772 F.2d 982, 986 (1st Cir.1985); People v. Guzman, 60 N.Y.2d 403, 410-12, 469 N.Y.S.2d 916, 457 N.E.2d 1143 (1983), cert. denied 466 U.S. 951, 104 S.Ct. 2155, 80 L.Ed.2d 541 (1984).

[4] In a separate motion, Defendant seeks an Order prohibiting the Court and the People from alerting prospective jurors of qualification standards for their service. In support, Defendant relies upon both the notion of heightened due process, which he avers attaches to all eapital eases, and New Jersey court cases wherein the Court and/or prosecutor erroneously notified prospective jurors of such qualification standards. See e.g., State v. Williams, 113 N.J. 393, 550 A.2d 1172, 1180 (1988). This Court is mindful of its obligations during voir dire. The Court also is convinced that the existing law governing jury selection *925 adequately addresses Defendant's concerns regarding the People.

Defendant's motions entitled DEF-40 and DEF-45 are in all respects denied.

N.Y.Sup.,2001. People v. Owens 186 Mise.2d 923, 721 N.Y.S.2d 487, 2001 N.Y. Slip Op. 21096

187 Misc.2d 317, 722 N.Y.S.2d 721, 2001 N.Y. Slip Op. 21123 (Cite as: 187 Misc.2d 317, 722 N.Y.S.2d 721)

H

Supreme Court, Monroe County, New York.
The PEOPLE of the State of New York, plaintiff,

John F. OWENS, Defendant.

Feb. 26, 2001.

In capital murder case, defendant filed motion alleging that he was denied effective assistance of eounsel when he was not timely notified that he would be charged with first degree murder. The Supreme Court, Monroe County, David D. Egan, J., held that defendant was not prejudiced by late notice.

Motion denied.

West Headnotes

Criminal Law 110 €=>1852

110 Criminal Law 110XXXI Counsel

110XXXI(B) Right of Defendant to Counsel 110XXXI(B)11 Deprivation or Allowance of Counsel

110k1852 k. Particular Cases in General, Most Cited Cases

(Formerly 110k641.12(1))

Defendant was not denied effective assistance of eounsel, even though the People failed to timely notify defendant that he might be charged with capital murder, which would have entitled him to appointment of counsel and investigative and other services; defendant was ultimately assigned capital counsel, and assignment of capital counsel occurred before grand jury presentation and a full year before commencement of individual voir dire. U.S.C.A. Const.Amend. 6; McKinney's Judiciary Law § 35-b, subd. 1.

**721*317 Kevin M. Doyle, Capital Defender (William T. Easton, Patricia Warth and Peter J. Pul-

lano of counsel), for Defendant.

Howard R. Relin, District Attorney of Monroe County (Michael C. Green and David A. Foster of counsel), for plaintiff.

DAVID D. EGAN, J.

This is a death penalty ease. Three months elapsed between Defendant's initial arraignment on non-capital murder charges, inter alia Second Degree (depraved indifference) Murder, in *318 June 1999 **722 and the People's formal notification to the Defendant that he would be charged with First Degree Murder in September 1999 FN1. Almost a full year later and only one week before a jury pancl of seven hundred (700) prospective jurors was summons to appear in early September 2000, Defendant brought this motion arguing he was denied effective assistance of counsel since he did not have the benefit of appointed eounsel under Judiciary Law § 35-b, which governs the appointment of counsel in a capital case. Defendant requests that the death notice be stricken, or that a evidentiary hearing be held. In supplemental papers, Defendant alternatively asks this Court to prohibit the People from using at trial any information resulting from the investigation which it undertook to determine if Defendant should be charged with First Degree Murder, or for a three month adjournment.

FN1. At arraignment the Roehester City Court inquired whether there was a possibility of a capital prosecution, but the People indicated that it had no information that such a prosecution was contemplated. Pursuant to Judiciary Law § 35-b (6), the People provided notice of the Second Degree Murder charge to the Capital Defender's Office.

The counsel appointed to represent Defendant under County Law § 18-b at his initial arraignment was both qualified to act and ultimately appointed

187 Misc.2d 317, 722 N.Y.S.2d 721, 2001 N.Y. Slip Op. 21123 (Cite as: 187 Misc.2d 317, 722 N.Y.S.2d 721)

as Defendant's lead counsel pursuant to the Judiciary Law § 35-b. Defendant however argues that the lack of a Judiciary Law § 35-b designation abridged his rights, since such designation gives a capital defendant both the right to the appointment of an associate counsel, as well as access to "adequate investigative, expert or other reasonably necessary services." Judiciary Law § 35-b (1), (2) & (8).

Judiciary Law § 35-b (1) provides in part:

in any criminal action in which a defendant is charged with murder in the second degree as defined in section 125.25 of the penal law and the district attorney confirms upon inquiry by the court that the district attorney is undertaking an investigation to determine whether the defendant can or should be charged with murder in the first degree as defined in section 125.27 of the penal law and the court determines that there is a reasonable likelihood the defendant will be so charged ... the defendant shall be entitled to the appointment of counsel and investigative, expert and such other reasonably necessary services in accordance with *319 the provisions of this section.

Id. (emphasis added). And Judiciary Law § 35-b (1) provides in part: "[w]ith respect to counsel at trial and at a separate sentencing proceeding, the court shall appoint two attorneys, one to be designated 'lead' counsel and the other to be designated 'associate' counsel." Id.

The People concede they did not formally notify Defendant that he would be charged with First Degree Murder until September 9, 1999, but assert that by late June 1999 they had informed both Defendant's counsel and the Capital Defender's Office that there was a possibility of First Degree Murder charges being filed.

At least one court has stated that Judiciary Law § 35-b mandates the "early involvement" of eapital representation for a defendant under investigation

for First Degree Murder. People v. Brown, 166 Misc.2d 378, 380, 633 N.Y.S.2d 936 (Mon.Cty.Ct.1995); see also, People v. Andrews. 170 Misc.2d 67, 69, 650 N.Y.S.2d 74 (Tompkins Cty. Ct.1996). For that reason, the People's equivocations upon inquiry failed to notify the Court of the ongoing First Degree Murder investigation in violation of Judiciary Law § 35-b. But even assuming that Defendant was denied improperly Judiciary Law § 35-b (8) representation for a three month period, Defendant has failed to demonstrate any prejudice resulting from such lack of representation. See People v. Muhammed, 183 Misc.2d 591, 598-99, 705 N.Y.S.2d 509 (Sup.Ct., Kings Cty.2000). Three months after his initial arraignment and eleven days before the **723 presentation of inter alia First Degree Murder charges to the Grand Jury, the People notified the Defendant of the potential First Degree Murder case. On or about September 15, 1999 this Court assigned capital counsel.

Defendant argues that the People had an unfair advantage in reviewing "fresh" evidence and researching the background of Defendant and his family. This Court finds Defendant has had adequate time and resources to prepare for both trial and potential mitigation. The assignment of capital counsel occurred before the Grand Jury presentation and a full year before the commencement of individual voir dire. Notably one form of relief Defendant seeks is an additional three month adjournment for pre-trial preparation. Recently a ten week adjournment was granted to the Defendant for the substitution of eounsel. During this same time this Court required the parties to appear only twice, simply to place on the record any additional consent excusals which the defense and the People *320 may have reached on the basis of the written Juror Questionnaires FN2. See People v. Owens, 2001 N.Y. Misc. LEXIS 6 (January 10, 2000).

FN2. Although defense counsel argued a few motions on those dates, the return dates were selected upon their request.

187 Misc.2d 317, 722 N.Y.S.2d 721, 2001 N.Y. Slip Op. 21123 (Cite as: 187 Misc.2d 317, 722 N.Y.S.2d 721)

For the foregoing reasons, Defendant's motion entitled DEF-49 is denied in its entirety.

N.Y.Sup.,2001. People v. Owens 187 Misc.2d 317, 722 N.Y.S.2d 721, 2001 N.Y. Slip Op. 21123

187 Misc.2d 380, 723 N.Y.S.2d 621, 2001 N.Y. Slip Op. 21124 (Cite as: 187 Misc.2d 380, 723 N.Y.S.2d 621)

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Supreme Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

John F. OWENS, Defendant.

March 6, 2001.

Capital murder defendant filed motion challenging the constitutionality of statutory guilty plea provisions in not affording a defendant an unconditional right to plead guilty when charged with first degree murder and when a notice of intent to seek the death penalty is pending. The Supreme Court, Monroe County, David D. Egan, J., held that the challenge was not ripe for adjudication.

Motion denied.

West Headnotes

[1] Constitutional Law 92 🗢 978

92 Constitutional Law

92VI Enforcement of Constitutional Provisions 92VI(C) Determination of Constitutional Questions

92VI(C)2 Necessity of Determination 92k978 k. Ripeness; Prematurity. Most Cited Cases

(Formerly 92k46(1))

Challenge to constitutionality of statutory death penalty scheme, insofar as it does not afford a defendant an unconditional right to plead guilty when charged with first degree murder and when a notice of intent to seek the death penalty is pending, was not ripe for adjudication where defendant had yet to make a request to enter a guilty plea. McKinney's CPL §§ 220.10, subds. 2, 5(c), 220.30,subd. 3(b)(vii), 220.60, subd. 2, 250.40, 400.27.

[2] Sentencing and Punishment 350H \$\infty\$=1626

350H Sentencing and Punishment

350HVIII The Death Penalty 350HVIII(A) In General

350Hk1622 Validity of Statute or Regulatory Provision

350Hk1626 k. Procedure. Most Cited

Statutory death penalty scheme was not shown to be unconstitutional in not affording a defendant an unconditional right to plead guilty when eharged with first degree murder when a notice of intent to seek the death penalty is pending. McKinney's CPL §§ 220.10, subds. 2, 5(e), 220.30, subd. 3(b)(vii), 220.60, subd. 2, 250.40, 400.27.

[3] Constitutional Law 92 ©== 1008

92 Constitutional Law

92VI Enforcement of Constitutional Provisions 92VI(C) Determination of Constitutional

Ouestions

Cases

92VI(C)3 Presumptions and Construction as to Constitutionality

92k1006 Particular Issues and Applica-

tions

92k1008 k. Penal Statutes, Most

Cited Cases

(Formerly 92k48(4.1))

Death penalty statutes, as construed by the Court of Appeals, carry a strong presumption of constitutionality, as do all statutes. McKinney's CPL §§ 220.10, subds. 2, 5(e), 220.30, subd. 3(b)(vii), 220.60, subd. 2, 250.40, 400.27.

**621*380 Howard R. Relin, District Attorney of Monroe County (Michael C. Green and David A. Foster of eounsel), for plaintiff.

Kevin M. Doyle, Capital Defender (William T. Easton, Patricia Warth and Peter J. Pullano of counsel), for defendant.

DAVID D. EGAN, J.

This is a death penalty ease. Defendant John Owens is charged with two counts of Murder in

187 Misc.2d 380, 723 N.Y.S.2d 621, 2001 N.Y. Slip Op. 21124 (Cite as: 187 Misc.2d 380, 723 N.Y.S.2d 621)

the First Degree, three counts of Murder in the Second Degree, and three counts of Rape in the First Degree. This Court by its decision dated August 17, 2000 severed for trial one count alleging Defendant raped victim "S.C." People v. Owens, DEF-32, unpublished (Sup.Ct. Mon. Cty. [Egan, J.] 2000). The District Attorney *381 filed a Notice of Intent To Seek The Death Penalty pursuant to Criminal Procedure Law (CPL) § 250.40 on January 24, 2000.

In this case Defendant has not sought to enter a guilty plea, either before or after **622 the District Attorney filed the Notice of Intent to Scek the Death Penalty. Nonetheless, Defendant challenges the constitutionality of the guilty plca provisions of CPL Article 220, and CPL §§ 250.40 and 400.27 as interpreted by the Court of Appeals in both Francois v. Dolan, 95 N.Y.2d 33, 709 N.Y.S.2d 898, 731 N.E.2d 614 (2000) and Hynes v. Tomei, 92 N.Y.2d 613, 684 N.Y.S.2d 177, 706 N.E.2d 1201 (1998). See New York Const., Art. I. Sec. 1, 2, 5 & 11; U.S. Const., Art. I, Sec. 10 & Amds. 5th, 6th, 8th and 14th. Defendant asks this Court to strike the Notice of Intent to Seek the Death Penalty, allow him to enter a guilty plea, if he so elects, or offer argument at senteneing that the law prohibited him from entering a guilty plea in this case.

In Hynes v. Tomei, 92 N.Y.2d 613, 684 N.Y.S.2d 177, 706 N.E.2d 1201 (1998) the Court of Appeals found the 1995 death penalty statute had a so-called Jackson infirmity, stating:

[c]apital defendants under the New York statute who are awaiting trial and are offered a plea are still faced with the choice Jackson declared unconstitutional: exercise Fifth and Sixth Amendment rights and risk death, or abandon those rights and avoid the possibility of death.

Id. at 626, 684 N.Y.S.2d 177, 706 N.E.2d 1201, citing United States v. Jackson, 390 U.S. 570, 582, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968). Instead of invalidating the entire death penalty statute, the Court excised the offending guilty plea provisions

set forth in CPL §§ 220.10(5)(e) and 220.30(3)(b)(vii), holding that the revised statute prohibits a guilty plea FN1 to First Degree Murder while a Notice of Intent to Seek the Death Penalty is pending. *Id.* at 629, 88 S.Ct. 1209.

FNI. Recently the Appellate Division for the Third Department in People v. Edwards, 274 A.D.2d 754, 712 N.Y.S.2d 71 (3rd Dept.2000) found that the mere offer of a plea bargain to First Degree Murder while a death notice is pending presents a capital defendant with the same unconstitutional Jackson choice. In Edwards the trial court permitted the prosecutor to withhold her eonsent to the plea and her withdrawal of the notice of intent to seek the death penalty until after defendant proffered his plea to the court and made a eomplete allocution. Id. at 757, 712 N.Y.S.2d 71. The Third Department reversed and vacated the defendant's guilty plea. Id. at 760, 712 N.Y.S.2d 71. This Court is aware that the Court of Appeals granted leave to appeal the Edwards decision in December 2000. The Court of Appeals will not hear arguments in that case until May 2001.

In Francois v. Dolan, 95 N.Y.2d 33, 709 N.Y.S.2d 898, 731 N.E.2d 614 (2000) the Court of Appeals further held that the District Attorney's statutory authority to file a Notice of Intent to Seek the Death Penalty within one hundred and twenty (120) days of arraignment, overrides a defendant's *382 unconditional right to plead guilty to an indictment under the general plea provisions of the Criminal Procedure Law, more specifically, CPL §§ 220.10(2) & 220.60(2). Id. at 38-39, 709 N.Y.S.2d 898, 731 N.E.2d 614. It is against this backdrop that Defendant argues, inter alia, that the current statute both deprives him of his fundamental right to plead guilty unconditionally, and denies him of the same rights those capital defendants enjoyed who were charged with First Degree Murder prior 187 Misc, 2d 380, 723 N.Y.S.2d 621, 2001 N.Y. Slip Op. 21124 (Cite as: 187 Misc, 2d 380, 723 N.Y.S.2d 621)

to the Court of Appeal's rulings in Hynes v. Tomei, supra. and François v. Dolan, supra.

[1][2] The People urge that Defendant lacks standing to ehallenge the constitutionality of CPL Artiele 220 and CPL §§ 250.40 and 400.27, and the issue is not ripe for this Court's determination. Defendant's indictment for First Degree Murder and the District Attorney's filing of the Notice of Intent to Seek the Death Penalty "brought [Defendant] squarely **623 within the statutory scheme which he argues is facially defective." People v. McIntosh, 173 Mise.2d 727, 728, 662 N.Y.S.2d 214 (Dutchess Cty, Ct.1997). But this Court finds that since this Defendant has yet to make a request to enter a guilty plea the issue is not ripe for adjudication. Cf. People v. Owens, 184 Misc.2d 600, 601, 710 N.Y.S.2d 790 (Sup.Ct. Mon. Cty. [Egan, J.] 2000). Even if Defendant now sought to enter a guilty plca this Court finds that Defendant has not proved beyond a reasonable doubt that the current death penalty scheme is unconstitutional.

[3] While a defendant does not have an unconditional right to plead guilty when charged with First Degree Murder and a Notice of Intent to Seek the Death Penalty is pending, the ability to enter a guilty plea is not completely foreclosed to him. As the Court of Appeals in *Hynes v. Tomei, supra.* at 629, 684 N.Y.S.2d 177, 706 N.E.2d 1201 aptly noted:

While reducing the flexibility of plea bargaining in capital cases, excision of the unconstitutional provisions does not prevent pleas of guilty to first degree murder when no notice of intent to seek the death penalty is pending, since defendants in that situation face the same maximum sentence regardless of how they are convicted. Nor does the resulting statute prevent a defendant from pleading guilty to another offense not punishable by death, even when a notice of intent to seek the death penalty is pending, since nothing in Jackson prohibits imposing different penalties for different crimes.

*383 Indeed here, Defendant has never explored the possibility of entering a guilty plea to the full indietment, even though this Court is aware that the District Attorney might have entertained the same before the Notice of Intent to Seek the Death Penalty was filed. This Court is bound by the decisions of the Court of Appeals in Hynes v. Tomei, supra, and Francois v. Dolan, supra, and acknowledges that the resulting New York "death penalty statute carries a strong presumption of constitutionality as do all statutes." Hynes v. Tomei, 92 N.Y.2d at 626, 684 N.Y.S.2d 177, 706 N.E.2d 1201

For the foregoing reasons, Defeudant's motion challenging the constitutionality of the guilty plea provisions of New York's death penalty statute is denied in its entirety.

N.Y.Sup.,2001. People v. Owens 187 Misc.2d 380, 723 N.Y.S.2d 621, 2001 N.Y. Slip Op. 21124



Not Reported in N.Y.S.2d, 2001 WL 1034244 (N.Y.Sup.), 2001 N.Y. Slip Op. 40116(U) (Cite as: 2001 WL 1034244 (N.Y.Sup.))

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NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE THE PEOPLE OF THE STATE OF NEW YORK

JOHN F. OWENS, Defendant.

lnd. #547/99 Consolidated with lnd. #414/99 DATED: March 16, 2001, Rochester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. First Assistant District Attorney DAVID A. FOSTER, ESQ. Assistant District Attorney FOR THE PEOPLE

KEVIN M. DOYLE, ESQ. Capital Defender WILLIAM T. EASTON, ESQ. First Deputy Capital Defender PATRICIA WARTH, ESQ. Deputy Capital Defender PETER J. PULLANO, ESQ. FOR THE DEFENDANT

EGAN, J.:

*1 Defendant asks this Court to declare the 1995 New York death penalty statutes, Penal Law §127.25 (2001) and Criminal Procedure Law ("CPL") §400.27 (2001), unconstitutional. Defendant argues that it (1) constitutes cruel and unusual punishment in violation of the U.S. Constitution, Art. I, §5; (2) constitutes disproportionate punishment in violation of the U.S. Constitution, 8th & 14th Amd.; New York Constitution, 8th & 14th Amd.; New York Constitution, Art. I, §5; (3) invites invidious discrimination against African-American and other eognizable groups causing the arbitrary imposition of the death penalty in violation of the U.S. Constitution, 5th, 6th, 8th & 14th Amd.; New York

Constitution, Art. I, §11; and (4) deprives citizens of their fundamental right to life in violation of the U.S. Constitution, 5th, 6th, 8th & 14th Amd.; New York Constitution, Art. I, §6. Defendant thus asks this Court to enter an Order dismissing the indietment and also requests an evidentiary hearing. The People oppose Defendant's motion.

Defendant, an African-American, argues that the 1995 death penalty encourages invidious discrimination against African-Americans and other cognizable groups, resulting in its arbitrary imposition. FNI Defendant suggests that in New York the following factors unfairly influence the imposition of the death penalty: geography, the race of defendant and victim, age of the victim and politics of both the Governor and local District Attorneys. In support Defendant relies upon nationwide studies and statistical data on executions and murder victims in New York. Defendant also cites statistical data showing the frequency by which death notices are filed in upstate New York, in particular Monroe County, compared to other areas of the state.

FN1. Defendant argues that the death penalty's (1) anticipatory deadlock instruction: (2) lack of guidelines in the two-step sentencing process; (3) prohibition against a capital defendant waiving a jury in the guilt phase of his trial; and (4) conditional guilty plea provisions, each serve to exacerbate the arbitrary imposition of the death penalty. This Court's earlier decisions found these provisions passed constitutional muster. See People v. Owens. 184 Misc. 2d 600 (Sup. Ct. Mon. Cty. 2000); People v. Owens, DEF-21, unpublished (Sup. Ct. Mon. Cty.[Egan, J.] May 30, 2000); People v. Owens, DEF-28, infra.; People v. Owens, DEF-27, unpublished (Sup. Ct. Mon. Cty.[Egan, J.] March 6, 2001).

*2 Defendant has not made an adequate show-

ing for an equal protection violation under our federal or state constitution. See U.S. Constitution, 5th , 6th, 8th & 14th Aind.; New York Constitution, Art. I, §11. Defendant emphasizes that "the New York Legislature passed the new death penalty statute with full knowledge that it would not, and ear-not be applied in a race-neutral manner FN2." As Defendant acknowledges he must show there exists a scheme of intentional discrimination, and "the decisionmakers in his case acted with a discriminatory purpose." See McClesky v. Kemp, 481 US 279, 292, rch'g denicd 482 US 920 (1987). In McClesky, the Supreme Court refused to accept statistics alone as proof of discrimination in the use of the death penalty. 481 US at 294. There is no evidence that New York's death penalty statute has been applied to discriminate against any constitutionally protected class. The statute does not single out a constitutionally protected class, only a specific subclass of murderers. People v. Mateo, 175 Mise. 2d 192, unpublished portion, p. 14 (Mon. Cty. Ct. 1997), Defendant moreover has failed to show that the alleged discriminatory scheme has had "a discriminatory effect on him." Id. at 292.

FN2. Defendant offers no support for this allegation. As discussed at length herein, the death penalty statute was structured to restrict a District Attorney's discretion and carefully guide a jury's determinations at both the guilt and sentencing phases of trial

Defendant also avers that New York's death penalty statute constitutes eruel and unusual punishment violation of U.S. Constitution, 8th & 14th Amd. The United States Supreme Court in Gregg v. Georgia, 428 US 153 (1976) held that the death penalty does not per se violate the cruel and unusual punishment elause. Indeed New York's death penalty statute was tailored to eonform with the procedural safeguards and constitutional requirements delincated in Gregg v. Georgia. Id.; see People v. Owens, DEF-28, unpublished, pp.2-3 (Sup. Ct. Mon. Cty.[Egan, J.] August 30, 2000).

Defendant has not advanced an argument that compels a different result under our State Constitution. New York Constitution, Art. I, §5 is a verbatim adaption of the U.S. Constitution's Eighth Amendment and arose out of the same historical framework. See People v. Hale, 173 Misc. 2d 140, 167 n. 18 (Snp. Ct. N.Y. Cty.), rev'd on other grounds sub nom Hynes v. Tomei, 237 AD2d 52 (2nd Dept. 1997), rev'd, 92 NY2d 613 (1998), cert denied 527 US 1015 (1999); People v. Mateo, supra. at 5; People v. Parker, unpublished, p. 53-54 (Erie Cty. Ct. [D'Amico, J.] July 2, 1998).

*3 Defendant further argues that the death penalty is in conflict with "contemporary standards of decency." This Court finds no merit to Defendant's contention since New York's death penalty statute was reenacted by the legislature just over five years ago in 1995 after receiving "extensive public debatc." See People v. Chinn, Nov. 19, 1996 NYLJ, at 31, col. 3 (Onondaga, Cty. Ct. 1996). The vast majority of other states have enacted a death penalty since the Supreme Court's landmark decision in Gregg v. Georgia, supra. See People v. Mateo, supra. at 6, eiting People v. Thompson, 83 NY2d 477, 480 (1994). "This statute is not an infringement on the rights of its eitizens but [rather] seen as a protection for its citizens." People v. Mateo, supra. at 8.

This Court does not agree that the District Attorney's "unbridled discretion" to seek and impose the death penalty renders it unconstitutional. The legislature designed the death penalty statute to inelude procedural safeguards restricting its imposition. The District Attorney may seek the death penalty only if the crime charged alleges one of twelve distinct aggravating factors that clevates it above other murders. See Penal Law §125.27(1). The District Attorney only has a one hundred and twenty (120) day window to decide whether to seek the death penalty. CPL §250.40 (2001) (Notice of Intent To Seek Death Penalty). At trial, the District Attorney carries the burden of proving beyond a reasonable doubt all of the elements of the crime,

Not.Reported in N.Y.S.2d, 2001 WL 1034244 (N.Y.Sup.), 2001 N.Y Slip Op. 40116(U) (Cite as: 2001 WL 1034244 (N.Y.Sup.))

including the statutory aggravating factors, before a jury even entertains the death sentence. See CPL \$400.27(3).

The jury's determination too is guided purposefully to prevent the arbitrary imposition of the death penalty. As this Court noted in an earlier decision:

CPL §400.27 [] employs a balancing test, justifying the imposition of a death sentence in only those cases where those aggravating factors proved at trial substantially outweigh all mitigating evidence. See CPL §§400.27(3), (6), and (11). CPL §400.27(3) provides for an individualized sentencing determination by allowing the Defendant to ehallenge any aggravating factor by presenting mitigating evidence "concerning the crime, the defendant's state of mind or condition at the time of the crime. . ." even in hearsay form. See CPL §400.27 (9) (f). An individual juror may consider any mitigator, if it was proved by Defendant to the satisfaction of such juror by a preponderance of the evidence. Unanimity is not required. CPL §400,27 (11)(a).

*4 The Supreme Court has held that such a weighing process alone is sufficient for the imposition of a death sentence. See Blystone v Pennsylvania, 494 US 299 (1990); Boyde v California, 494 US 370 (1990). Instead CPL §400.27 (11) (a) provides an additional safeguard for a defendant facing the death penalty. The weighing process is a prerequisite to the sentencing jury's "unanimous determin[ation] that the penalty of death should be imposed." Id. CPL §400.27 (11) (a) thus empowers the jury to exercise mercy and decline to impose the death penalty even if it has found, after weighing both aggravating and mitigating factors, that death is otherwise warranted.

Despite Defendant's claims otherwise, no further guidelines are constitutionally required at this stage of the jury's deliberations. See Tuilaepa v. California, 512 US 967, 979-80 (1994) ("[a] capital sentencer need not be instructed how to weigh any particular fact in the capital sentencing decision.")

People v. Owens, DEF-28, supra. Finally, the Court of Appeals automatically reviews any death sentence.

Defendant next asserts that New York's death penalty statute constitutes a disproportionate punishment in violation of U.S. Constitution, 8th & 14th Amd.; New York Constitution, Art. 1, §5. Penal Law §125.27(1) "genuinely narrow[s] the class of persons eligible for the death penalty" by delineating twelve distinct aggravating factors that raise the gravity of their crimes above other murders. See Lowenfield v. Phelps, 484 US 231, 244 (1988). Defendant has not proved that a sentence of death is disproportionate to the enumerated crimes in Penal Law §125.27. Accord People v. Mateo, supra at 6-8; People v. Parker, supra at 56; see People v. Broadie, 37 NY2d 100, 117 (1975) ("Rarcly has a penal sanction been struck down by the courts of this State as unconstitutional under the cruel and unusual punishment clause, and never on the ground of disproportionality.")

Defendant finally contends that the death penalty deprives eitizens of their fundamental right to life. The Courts of New York have uniformly rejected similar claims since there is no federal or state authority guaranteeing a convicted murderer of the fundamental right to life. See e.g., People v. Parker, supra. at 59; People v. Matco, supra. at 2-10; People v. Chinn, supra. This Court finds no reason to differ from those holdings.

*5 For the foregoing reasons, Defendant's motion entitled DEF-25 challenging the constitutionality of New York's death penalty statute is denied in its entirety.

This shall constitute the Opinion, Decision and Order of this Court.

ZYNY
People v. Owens
Not Reported in N.Y.S.2d, 2001 WL 1034244
(N.Y.Sup.), 2001 N.Y. Slip Op. 40116(U)

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Supreme Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

John F. OWENS, Defendant.

March 23, 2001.

Defendant, charged with eapital murder, sought relief following issuance of allegedly improper subpocnas duees tecum. The Supreme Court, Monroe County, David D. Bgan, J., held that: (1) subpocnas did not violate federal Family Rights and Privacy Act; (2) information contained in subpocnaed prison records could be provided to prosecution, following redaction to exclude physician-patient privileged information and any sealed youthful offender records; (3) defendant lacked standing to challenge subpoenas of relatives' medical records; (4) subpoenas could be issued without notifying defendant; and (5) prosecution would not be sanctioned for inadvertently making subpoenas returnable to its offices, rather than court.

Relief denied.

West Headnotes

[1] Records 326 @==31

326 Records

326II Public Access

326II(A) In General

326k31 k. Regulations Limiting Access; Offenses. Most Cited Cases

Rights of capital murder defendant, under federal Family Rights and Privacy Act, were not violated when educational institutions released records to prosecution, pursuant to subpoenas. General Education Provisions Act, § 444(b)(1), as amended, 20 U.S.C.A. § 1232g(b)(1).

[2] Records 326 🖘 31

326 Records

326II Public Access

326II(A) In General

326k31 k. Regulations Limiting Access; Offenses. Most Cited Cases

Failure of educational institutions to notify capital murder defendant that they were supplying records to prosecution pursuant to subpoena, as required by federal Family Rights and Privacy Act, did not affect validity of subpoena as exception to Act's disclosure prohibitions. General Education Provisions Act, § 444(b)(2), as amended, 20 U.S.C.A. § 1232g(b)(2).

[3] Privileged Communications and Confidentiality 311H €-256

311H Privileged Communications and Confidentiality

311HIV Physician-Patient Privilege

311Hk256 k. Medical or Hospital Records or Information. Most Cited Cases (Formerly 110k627.8(4))

Privileged Communications and Confidentiality 311H €=376

311H Privileged Communications and Confidentiality

311HVI Public Officers and Records

311Hk376 k. Juvenile Records. Most Cited Cases

(Formerly 110k627.8(4))

Information regarding defendant in capital murder case, obtained from subpoenas served on correctional institutions, could be given to prosecution, following in camera review by court to climinate information subject to physician-patient privilege and sealed records arising out of any youthful offender adjudications. McKinney's CPLR 4504, 4507.

[4] Witnesses 410 = 16

410 Witnesses

4101 In General

410k16 k. Subpoena Duces Tecum. Most Cited Cases

Defendant in capital murder case lacked standing to challenge issuance of subpoenas for medical records of defendant's relatives, made returnable to court and held by court in confidence for use only if information became material during trial

[5] Witnesses 410 €==16

410 Witnesses

4101 In General

410k16 k. Subpoena Duces Tecum. Most Cited Cases

Prosecution could issue subpoenas duces tecum to third parties, in capital murder case, without notifying defendant. McKinney's CPL § 610.20, subd. 2; McKinney's CPLR 2307.

[6] Witnesses 410 €== 16

410 Witnesses

410I In General

410k16 k. Subpoena Duces Teeum. Most Cited Cases

Any requirement that prosecution give notice, to defendant charged with capital murder, of subpoenas being served on third parties, due to lack of reciprocal discovery, was satisfied when court required that prosecution reproduce and give to defendant copies of any material obtained through subpoenas.

[7] Criminal Law 110 \$\infty\$=627.8(6)

110 Criminal Law

110XX Trial

110XX(A) Preliminary Proceedings

110k627.5 Discovery Prior to and Incident to Trial

110k627.8 Proceedings to Obtain Dis-

closure

110k627.8(6) k. Failure to Produce Information, Most Cited Cases

Trial court would not sanction prosecution, in capital murder case, for inadvertently making third party subpoenas returnable at prosecution's office rather than court, when there was no showing of prejudice to defendant. McKinney's CPL § 610.25.

**267*201 Kevin M. Doyle, Capital Defender (William T. Easton and Patricia Warth of counsel), and Peter J. Pullano for Defendant.

Howard R. Relin, District Attorney of Monroe County (Michael C. Green and David A. Foster of counsel), for plaintiff.

DAVID D. EGAN, J.

This is a death penalty case. Defendant alleges that the District Attorney obtained potential evidence pursuant to several improperly issued subpoenas duees tecum. Defendant seeks various relief ranging from striking the Notice of Intent to Seek the Death Penalty to suppression. This Court signed subpoenas duces tecum at the People's request directed to Defendant's educational institutions and employer, as well as correctional facilities and law enforcement agencies. Subpoenas *202 duces tecum were also issued to local area hospitals seeking records relating to Defendant's relatives.

The People served subpoenas duces tecum on several educational institutions, including the Webster Central School District, Monroe Community College, Medaille College, and the State University of New York, College of Broekport, dated December 1, 1999 and returnable before this Court on December 15, 1999. The subpoenas, captioned People v. John F. Owens, sought production of "any and all records, including but not limited to academic and disciplinary records relating to JOHN F. OWENS, DOB 1/20/62," were signed by the District Attorney, and contained a notice at the bottom that "[m]aterials specified to be produced will be retained in the custody of the Court."

The State University of New York, College of Brockport and Medaille College, by letters dated

December 8, 1999 and December 9, 1999 respectively, indicated that they had no record of Defendant's attendance at their institutions. The other two institutions produced records.

Defendant argues that due to their abuse of process, the People should be precluded from any use or derivative use of these subpoenaed school reeords. The People oppose Defendant's motion arguing he has no standing to challenge these subpoenas.

[1][2] Defendant relies on 20 USC § 1232g, the Family Rights and Privacy Act of 1974 ("FERPA"), to assert a privacy interest in the subpoenaed school records, and substantiate his standing. Defendant has no proprietary or privacy interest in his school records. Under 20 USC § 1232g Congress limited the dissemination of education records to third-parties without the written consent of a parent or adult-student FN1. There are, however, exceptions to this general rule of non-disclosure; one specifically permits disclosure to state or federal law enforcement in response to a subpoena. 20 USC § 1232g(b)(1)

FN1. The schools apparently produced these records in response to the subpoenas without challenge or notice to Defendant. Defendant asserts he became aware of the subpoenas when the People produced and delivered copies of the subpoenaed records to him. The statute provides for withholding funds from an institution that responds to a subpoena without giving notice of the subpoena to the student. 20 USC § 1232g(b)(2). While Defendant may have a claim to file with the overscers of federal educational funds regarding lack of notice, any failure by the educational institution to give notice to Defendant does not effect the validity of the subpoena.

**268 *203 Defendant thus lacks standing to challenge the subpoenas. "[T]his case is governed by the general rule that the issuance of a subpoena

to a third party to obtain the records of that party does not violate the rights of a defendant, even if a criminal prosecution is contemplated at the time the subpoena is issued [eitations omitted]." United States v. Miller, 425 U.S. 435, 444, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976) (decided before the enactment of 12 USC § 3410, providing standing to a bank customer to quash a subpoena for his financial records). See also, People v. DiRaffaele, 55 N.Y.2d 234, 448 N.Y.S.2d 448, 433 N.E.2d 513 (1982); People v. Orzel, 192 A.D.2d 818, 596 N.Y.S.2d 556 (3rd Dept.1993).

[3] Defendant does not argue that he has a privacy or propriety interest in the documents the People subpoenaed from Monroe County Sheriff's Department, Jail Division, Groveland Correctional Facility FN2, Monroe County Probation Department, New York State Division of Parole. Defendant's ehief complaint is that the records from these institutions and agencies contain material governed by certain statutory privileges, such as the physician-patient privilege under Civil Practice Law and Rules ("CPLR") §§ 4504; 4507.

FN2. This subpoens was sent with a cover letter dated December 2, 1999 asking the records be sent to this Court.

All of Defendant's records from the Monroe County Sheriff's Department, Jail Division, Groveland Correctional Facility and Monroe County Probation Department were delivered to the Court. The New York State Division of Parole by letter dated December 3, 1999 indicated that it did not possess any responsive documents, since as a policy it only retains records for three years after maximum expiration. By earlier motion,

Defendant [] asked this Court to sign a subpoena sceking the records of the Monroe County Department of Probation, including presentence investigation reports prepared in connection with defendant's prior eriminal convictions. The defense intend[ed] to use the presentence reports and other records both to dissuade the District

Attorney from seeking the death penalty and to prepare for mitigation in the senteneing phase of trial. The People [did] not oppose Defendant's request, but rather ask[ed] this Court for similar access to these reports.

People v. Owens, 183 Misc.2d 208, 209, 703 N.Y.S.2d 881 (Mon.Cty.Ct.1999). This Court allowed disclosure to the defense and the People, except it found that disclosure should not extend to "sealed *204 records arising out of any youthful offender adjudication afforded the defendant." Id.

This Court is aware that a prisoner's medical information is not subject to disclosure unless such inmate's health is at issue. 7 New York Codes, Rules and Regulations (N.Y.CRR) § 5.24(5) (2001) Indeed for this very reason this Court conducted an in camera review of the records it received from these institutions and agencies, and removed, or otherwise redacted, any privileged materials. The Court further redacted any youthful offender information in accordance with its previous decision. See Id. For the same reason, this Court has not disclosed Defendant's medical records subpoenaed by the People from the Occupational Health Connection and returnable on August 18, 2000.

The People also directed subpoenas duees tecum to Defendant's employer, Labor Ready. This Court finds Defendant again lacks standing to challenge the subpoenas.**269 Accord People v. Santiago, unpublished p. 2 (Mon. Cty. Ct. [Bristol, J.] March 26, 1999).

[4] Finally, the People issued subpoenas duces tecum, which were returnable to this Court, seeking the medical records of Defendant's family members from local area hospitals. Defendant lacks standing to challenge these subpoenas. "[A] subpoena may only be challenged by the person to whom it is directed or by a person whose property rights or privileges may be violated." In re Selesnick, 115 Mise.2d 993, 995, 454 N.Y.S.2d 656 (Sup.Ct. N.Y. Cty.1982). Defendant argues, however, that it would impose an additional burden on him to re-

quire his family members, including some who live outside of New York, to challenge the validity of such subpoenas. This Court has these medical records in its possession. *People v. Natal*, 75 N.Y.2d 379, 385, 553 N.Y.S.2d 650, 553 N.E.2d 239 (1990) (citations omitted); see CPL § 610.25(1). The records will not be released to the People unless and until they become relevant to an issue at trial. Defendant's family members thus will have ample opportunity to seek to quash or otherwise challenge the validity of such subpoenas at that time.

[5] Defendant argues he is entitled to relief regardless of his standing since the People abused process by failing to provide him with notice of all the subpoenas pursuant to CPLR § 2307. Defendant only learned of the subpoenas when the People, at this Court's direction, reproduced the subpoenaed documents and delivered them to him. CPLR § 2307 is not applicable to subpoenas issued by the People pursuant to CPL § 610.20(2). See Matter of Irwin v. Board of Regents, 27 N.Y.2d 292, 317 N.Y.S.2d 332, 265 N.E.2d 752 (1970); *205 People v. Cajigas, 10/28/97 NYLJ 30, col. 3 (Westehester Cty. Ct. [Angiolillo, J.] 1997); People v. Hall, 179 Misc.2d 488, 490, 686 N.Y.S.2d 551 (Sup.Ct.Mon.Cty.1998). Cf. People v. Owens, 182 794, Misc.2d 701 N.Y.S.2d (Sup.Ct.Mon.Cty.1999). The Legislature has given the District Attorney the authority to issue both Grand Jury subpoenas and trial subpoenas. Criminal Procedure Law ("CPL") § 610.20(2); see 610.20(3) (applying equally to subpoenas duecs tecum). The disparity between subdivision (2) and (3) of CPL § 610.20 clarify that the Legislature made a distinction between the notice requirement attached to subpoenas issued by the People versus those issued by a defendant. The People have diseretion to " issue subpoenas duces tecum without notice to [a] defendant or the sanction of the court." People v. Hall, supra.

[6] Defendant further argues that notions of reciprocity require that he be given notice of the

People's subpoenas. See Wardius v. Oregon, 412 U.S. 470, 93 S.Ct. 2208, 37 L.Ed.2d 82 (1973). This Court addressed in part any potential prejudice that might arise due to the lack of reciprocity of the statutory notice provisions by ensuring Defendant's access to the materials before trial. After signing the subpoenas, this Court specifically directed the People to reproduce and provide copies of any materials obtained through the issuance of the subpoenas duces tecum to the defense.

[7] Defendant avers that the People abused process by making the subpoenas returnable to their office. A subpoena duees tecum issued for documents that may be introduced at trial is returnable to the Court. The Court determines the terms of possession of subpoenaed material. CPL § 610.25. "It is for the court, not the prosecutor, to determine where subpoenaed materials should be deposited, as well as any disputes regarding production." People v. Natal, supra. The People**270 acknowledge that some records were inadvertently delivered to their office, but affirm under oath that they did not review or copy those records before they delivered them to this Court.

While not condoning the practice of the People FN3, this Court finds no deteliction of the People's duty as officers of the Court or prejudice resulting to Defendant. *Cf. People v. Warmus*, 148 Misc.2d 374, 380-384, 561 N.Y.S.2d 111 (Westchester Cty. Ct.1990).

FN3. The People should by eover letter clarify that all subpoenaed materials were returnable to the Court.

Defendant asserts the People abused process by seeking materials that are not relevant to any issue before this Court. A subpoena duces tecum is designed "to compel the production *206 of specific documents that are relevant and material to facts at issue in a pending judicial proceeding." Matter of New York State Dept. of Labor v. Robinson, 87 A.D.2d 877, 878, 449 N.Y.S.2d 321 (2nd Dept.1982). However, it may not be used to cir-

cumvent the discovery provisions of CPL §§ 240.20 and 240.40. People v. Gissendanner, 48 N.Y.2d 543, 551, 423 N.Y.S.2d 893, 399 N.E.2d 924 (1979), or "to 'fish for impeaching material' " Constantine v. Leto, 157 A.D.2d 376, 378, 557 N.Y.S.2d 611 (3rd Dept.1990), aff'd 77 N.Y.2d 975, 571 N.Y.S.2d 906, 575 N.E.2d 392 (1991). A showing that certain documents carry a potential for establishing relevant evidence is insufficient; instead, a defendant must put forth "some factual predicate" which would make it reasonably likely that documentary information will bear relevant and exculpatory evidence. People v. Gissendanner, supra. at 550, 423 N.Y.S.2d 893, 399 N.E.2d 924. Since this Court finds Defendant lacks standing to challenge the subpoenas in question, and no misuse of process by the People, this Court finds no need to address Defendant's claim of irrelevance. Suffice it to say, this Court finds that the subpoenaed materials are relevant and material to facts at issue in this pending capital trial.

The capital cases relied upon by Defendant are distinguishable. See People v. Simpkins, unpublished, p. 4-5 (Sup.Ct. Kings Cty. [Tomei, J.] December 16, 1998) (court refused to reissue subpoenas for defendant's school records finding them irrelevant to the determination of whether the District Attorney should seek the death penalty); People v. Campos, unpublished, p. 4-5 (Sup.Ct. Kings Cty. [Demarest, J.] March 26, 1998) (court found Defendant's former correctional records irrelevant to the determination of whether the District Attorney should seek the death penalty); People v. Cajigas, unpublished and on the record, Tr. 9 (Westchester Cty. Ct. [Angiolillo, J.] April 23, 1997) (found subpoenas for school records to be issued prematurely, but left opened the possibility of future relevance on issues of voluntariness of statements, rebuttal of mitigation evidence and mental condition of defendant).

For the foregoing reasons, Defendant's motion entitled DEF-61 is denied in its entirety.

N.Y.Sup.,2001.

People v. Owens 188 Misc.2d 200, 727 N.Y.S.2d 266, 2001 N.Y. Slip Op. 21204



187 Misc.2d 624, 725 N.Y.S.2d 532, 2001 N.Y. Slip Op. 21176 (Cite as: 187 Misc.2d 624, 725 N.Y.S.2d 532)

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Supreme Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

John F. OWENS, Defendant.

March 30, 2001.

On defendant's motion to compel disclosure of information regarding prosecution's survey of potential jurors, the Supreme Court, Monroe County, David D. Egan, J., held that defendant in death penalty case was not entitled to disclosure of People's work product in form of survey of 432 jury-eligible persons, absent actual prejudice resulting from survey.

Motion denied.

West Headnotes

Sentencing and Punishment 350H & 936

350H Sentencing and Punishment
350HIV Sentencing Guidelines
350HIV(H) Proceedings
350HIV(H)1 In General
350HIV(B)36 k. Other Discovery and Disclosurc. Most Cited Cases

Defendant in death penalty ease was not entitled to disclosure of People's work product in form of community attitude survey of 432 jury-eligible persons, absent actual prejudice resulting from survey; survey predated draw of jury pool in case, only one prospective juror revealed knowledge of the survey, and defendant had unlimited opportunity to question that juror concerning any racial biases, pre-conceived attitudes about the death penalty, and any other matter.

**533*624 Kevin M. Doyle, Capital Defender (William T. Baston and Patricia Warth of eounsel), and Peter J. Pullano for Defendant. Howard R. Relin, District Attorney of Monroe County (Michael C. Green and David A. Foster of counsel), for plaintiff.

DAVID D. EGAN, J.

This is a death penalty case. On March 15, 2001 defendant filed a "Motion in Limine To Compel the Prosecution to Disclose All Information Regarding Its Survey of Potential Jurors." In the alternative, defendant seeks an *in camera* review of such information. On March 16, 2001 the People filed an affirmation opposing defendant's motion. On March 16, 2001 this *625 court, on the record, denied defendant's motion entitled DEF-73 in its entirety.

The survey eame to the court's attention when a prospective juror during individual voir dire informed the court that his spouse had received a call from an unidentified pollster concerning a capital nurder trial, specifically identifying the race and gender of the defendant and the victim.

The People admit that at their behest a "community attitude survey was conducted between July 24, 2000 and July 31, 2000 in Monroe County. Four hundred and two jury-eligible subjects were randomly contacted by telephone." Defendant alleges that the use of the survey by the People adversely affected jury selection in this capital case.

On August 4, 2000 the Monroe County Commissioner of Jurors (Commissioner) drew a jury pool of two thousand two hundred (2,200) prospective jurors for this ease. The Commissioner mailed two thousand two hundred (2,200) summonses to prospective jurors on August 10, 2000. On September 6, 2000 jury selection commenced when seven hundred (700) prospective jurors complied with the Commissioner summonses and appeared to complete this court's written questionnaire. Individual voir dire pursuant to Criminal Procedure Law (CPL) § 270.16(1) commenced on September 27,

187 Misc.2d 624, 725 N.Y.S.2d 532, 2001 N.Y. Slip Op. 21176 (Cite as: 187 Misc.2d 624, 725 N.Y.S.2d 532)

2000.

Defendant failed to show any actual prejudice resulting from the People's survey of the community and, thus, disclosure of the People's work product is not warranted. This court finds the survey predated the draw of the jury pool for this ease. Only one prospective juror revealed knowledge of the survey out of the five hundred and ninety-one (591) prospective jurors who underwent individual questioning, or were excused by consent of the parties. As with all prospective jurors, defendant had an unlimited opportunity to **534 question that juror concerning any racial biases, pre-conecived attitudes about the death penalty, and any other matter the defendant deemed appropriate.

Defendant's motion entitled DEF-73 is denied in its entirety.

N.Y.Sup.,2001. People v. Owens 187 Misc.2d 624, 725 N.Y.S.2d 532, 2001 N.Y. Slip Op. 21176



Not Reported in N.Y.S.2d, 2001 WL 1035087 (N.Y.Sup.), 2001 N.Y. Slip Op. 40120(U) (Cite as: 2001 WL 1035087 (N.Y.Sup.))

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NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS, NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE THE PEOPLE OF THE STATE OF NEW YORK

v.
JOHN F. OWENS, Defendant.

Ind. #547/99 Consolidated with Ind. #414/99 DATED: April 2, 2001, Rochester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Assistant District Attorney DAVID A. FOSTER, ESQ. Assistant District Attorney FOR THE PEOPLE

KEVIN M. DOYLE, ESQ. Capital Defender (William T. Easton, Esq., First Deputy Capital Defender, Patricia Warth, Esq., Deputy Capital Defender) PETER J. PULLANO, ESQ. FOR DEFENDANT

EGAN, J.;

*1 This is a death penalty ease. The District Attorney filed a Notice of Intent To Seek The Death Penalty pursuant to Criminal Procedure Law (CPL) §250.40 (2001) on January 24, 2000. In the midst of the presentation of evidence at trial, Defendant filed his "Renewed Motion to Strike The District Attorney's Notice to Seck The Death Penalty," asking this Court to revisit its decision entitled DEF-25, entered on March 16, 2001. See People v. Owens, DEF-25, unpublished (Sup. Ct. Mon. Cty. [Egan, J.] March 16, 2001). In the alternative, Defendant asks this Court to declare a mistrial, remove the District Attorney's office from this case and appoint a special prosecutor in their stead. The People made no submissions in response to Defendant's renewed motion.

This Court denied Defendant's motion entitled DEF-25 ehallenging the constitutionality of New York's death penalty statute in its entirety. Id. Defendant asks this Court to reconsider its earlier decision since "the decision makers in his case acted with a discriminatory purpose." Specifically, Defendant takes issue with this Court's prior finding that:

There is no evidence that New York's death penalty statute has been applied to discriminate against any constitutionally protected class. The statute does not single out a constitutionally protected class, only a specific subclass of murderers. People v. Matco, 175 Mise. 2d 192, unpublished portion, p. 14 (Mon. Cty. Ct. 1997). Defendant moreover has failed to show that the alleged discriminatory scheme has had "a discriminatory effect on him"

Id. at 292.

Defendant argues that the People "engaged in 'racial profiling' with their use of a 'community attitude survey," and this Court failed to evaluate how such survey undermined Defendant's state and federal constitutional rights to equal protection. U.S. Constitution, 8th & 14th Amd.; New York Constitution, Art. 1, §§5 &11. In support, Defendant submits an affidavit from a jury selection and public opinion survey expert who maintains that the use of such survey while a death notice is pending is improper and unethical. The expert specifically states the likely

purpose of the poll was to facilitate the prosecution's ability to identify and seat jurors who would lack impartiality in a capital trial involving a black defendant and white victim[,] * * *

whose racism was not so apparent, and to use the information either to aid in shaping the jury or developing a trial strategy or both * * *

[and] to determine the likelihood, based on

Not Reported in N.Y.S.2d, 2001 WL 1035087 (N.Y.Sup.) 2001 N.Y. Slip Op. 40120(U) (Cite as: 2001 WL 1035087 (N.Y.Sup.))

community attitudes, that the People could obtain a death penalty in the case at trial, or whether it would be prudent to offer the defendant the opportunity to plead guilty.

*2 Declaration of Edward J. Bronson, Ph.D. p. 9, p. 12 & p.4 p.2

The survey came to this Court's attention when a prospective jutor during individual voir dire informed the Court that his spouse had received a call from an unidentified pollster concerning a capital murder trial, specifically identifying the race and gender of the defendant and the victim. The People admit that at their behest a "community attitude survey was conducted between July 24, 2000 and July 31, 2000 in Monroe County. Four hundred and two jury-eligible subjects were randomly contacted by telephone."

Assuming arguendo, that Defendant's expert correctly identified the People's purposes in using the survey, this Court finds Defendant's challenge without mcrit. This Court recently denied Defendant's motion to compel the People to disclose all information regarding its survey, finding Defendant failed to show any actual prejudice FNI. People v. Owens, DEF-73, unpublished (Sup. Ct. Mon. Cty. [Egan, J.] March 30, 2001). The People's survey predated the draw of the jury pool in this case. As this Court previously found:

FN1. This Court takes no position on the District Attorney's use of such surveys, and its decision should not be viewed as an endorsement of such practice.

Only one prospective juror revealed knowledge of the survey out of the five hundred and ninety-one (591) prospective jurors who underwent individual questioning, or were excused by consent of the parties. As with all prospective jurors, Defendant had an unlimited opportunity to question that juror concerning any racial biases, pre-conceived attitudes about the death penalty, and any other matter the Defendant decined appropriate.

Id. at 2.

This Court also does not find that such a survey influenced the People's determination on whether to offer Defendant an opportunity to plead guilty. The District Attorney has a one hundred and twenty (120) day window to decide whether to seek the death penalty. CPL. §250.40. Once a Notice of Intent to Seek the Death Penalty is pending, a defendant does not have an unconditional right to plead guilty to First Degree Murder. Instead during the pendency of a Notice, a defendant may plead guilty only to a noncapital offense. Hynes v. Tomci, 92 NY2d 613, 629 (1998).

The People's survey postdated the filing of the death notice by approximately six months in this case. More important, Defendant did not seek to enter a guilty plea, either before or after the District Attorney filed the Notice of Intent to Seek the Death Penalty FN2.

FN2. Defendant never explored the possibility of entering a guilty plea to the full indictment, even though this Court is aware that the District Attorney might have entertained the same before the Notice of Intent to Seek the Death Penalty was filed.

*3 Defendant also avers that the "widely divergent standards" of District Attorneys in seeking the death penalty between counties and within counties violates his rights to equal protection under the law. Defendant relies on updated statistics, and again emphasizes that the Monroe County District Attorncy has sought the death penalty at the highest rate of any District Attorney in New York State. Defendant also relies on the United States Supreme Court's recent decision in Bush v. Gore, 531 US 98, _, 121 S. Ct. 525, 531 (2000), where the Court found, in the context of a challenge to the recount of ballots relating to the most recent Presidential election, that since "standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county. .. [it was] not a process with sufficient guarantees

Not Reported in N.Y.S.,2d, 2001 WL 1035087 (N.Y.Sup.), 2001 N.Y. Slip Op. 40120(U) (Cite as: 2001 WL 1035087 (N.Y.Sup.))

of equal treatment."

In Bush the Supreme Court stated:

The question before the Court is not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections. Instead, we are presented with a situation where a state court with the power to assure uniformity has ordered a statewide recount with minimal procedural safeguards. When a court orders a statewide remedy, there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied.

Id. at 532.

This Court finds that nothing in Defendant's additional submission alters its earlier decision. People v. Owens, DEF-25, supra. The District Attorney has not been given "unbridled discretion" to seek the death penalty. The legislature designed the death penalty statute to include procedural safeguards restricting its imposition (People v. Owens, DEF-25, supra. at 3-4), assuring "the rudimentary requirements of equal treatment and fundamental fairness are satisfied." See Bush v. Gore, supra.

Defendant's renewed motion entitled DEF-76 is denied in its entirety.

This shall constitute the Opinion, Decision and Order of this Court.

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People v. Owens
Not Reported in N.Y.S.2d, 2001 WL 1035087
(N.Y.Sup.), 2001 N.Y. Slip Op. 40120(U)



187 Misc.2d 838, 725 N.Y.S.2d 178, 2001 N.Y. Slip Op. 21197 (Cite as: 187 Misc.2d 838, 725 N.Y.S.2d 178)

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Supreme Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

John F. OWENS, Defendant.

April 6, 2001.

Defendant charged with capital murder and rape moved for order suppressing results from People's deoxyribonucleic acid (DNA) testing, or in alternative to conduct Frye hearing. The Supreme Court, Monroe County, David D. Egan, J., held that Short Tandem Repeat (STR) DNA profiling, using AmpF/STR Profiler Plus and Cofiler PCR kits, is reliable and generally accepted by scientific community.

Motion denicd.

West Headnotes

[1] Criminal Law 110 5 388.2

110 Criminal Law

110XVII Evidence

110XVII(I) Competency in General

110k388 Experiments and Tests; Scientific and Survey Evidence

110k388.2 k, Particular Tests or Experiments. Most Cited Cases

Short Tandem Repeat (STR) deoxyribonucleic acid (DNA) profiling, using AmpF/STR Profiler Plus and Cofiler PCR kits, are reliable and generally accepted by scientific community.

[2] Criminal Law 110 @=388.1

110 Criminal Law

110XVII Evidence

110XVII(1) Competency in General

110k388 Experiments and Tosts; Scientific and Survey Evidence

110k388.1 k. In General. Most Cited

Cases

General scientific acceptance, not universal acceptance, is required for the admission of scientific evidence.

[3] Criminal Law 110 \$\infty\$695.5

110 Criminal Law

110XX Trial

110XX(D) Procedures for Excluding Evidence

110k695.5 k. Hearing, Ruling, and Objections. Most Cited Cases

Novel scientific evidence may be admitted without any hearing at all by the trial court.

[4] Criminal Law 110 €=388.2

110 Criminal Law

110XVII Evidence

110XVII(1) Competency in General

110k388 Experiments and Tests; Scientific and Survey Evidence

I10k388.2 k. Particular Tests or Experiments. Most Cited Cases

Claims concerning protocols and procedures of laboratories that conducted Short Tandem Repeat (STR) DNA profiling, using AmpF/STR Profiler Plus and Cofiler PCR kits, went to foundation or weight of test results, not to whether such method of testing was reliable and generally accepted by scientific community.

[5] Criminal Law 110 🖘 404.11

110 Criminal Law

110XVII Evidence

110XVII(K) Demonstrative Evidence

110k404.I0 Foundation or Authentication

110k404.11 k. In General. Most Cited

Cases

Foundation concerns itself with the adequacy of the specific procedures used to generate the particular evidence to be admitted.

187 Misc.2d 838, 725 N.Y.S.2d 178, 2001 N.Y. Slip Op. 21197 (Cite as: 187 Misc.2d 838, 725 N.Y.S.2d 178)

**179*838 Kevin M. Doyle, Capital Defender (William T. Easton and Patricia Warth of counsel), and Peter J. Pullano, for Defendant.

Howard R. Relin, District Attorney of Monroe County (Michael C. Green and David A. Foster of counsel), for plaintiff.

DAVID D. EGAN, J.

This is a death penalty case. Defendant John Owens moves this court for an order suppressing the results from the People's *839 Deoxyribonucleic Acid (DNA) testing, or in the alternative to conduct a Frye hearing. Frye v. United States, 293 F. 1013 (D.C.App.1923). The People oppose the motion.

Defendant is being tried for crimes against three victims arising out of separate incidents that occurred within a two month period in 1999. Counts One and Three of Indictment No. 547/99 arise out of the murder of Rosemarie Constantino. who was killed in the course of a rape in the Maplewood area in the City of Rochester on April 28-29, 1999, and charge defendant with Murder, First Degree (Penal Law § 125.27(a)(vii) and (b)), and Murder, Second Degree (Penal Law § 125.25(1)), respectively. Counts Two and Four of the same Indictment and Count One of Indictment No. 414/99 (previously consolidated by Order of this court dated November 22, 1999) arise out of the alleged murder and rape of Sherry Tuthill at 200 Merlin Street, City of Rochester on May 30-June 1, 1999. See People v. Owens, DA-1, unpublished (Mon. Cty. Ct. [Egan, J.] November 22, 1999). Defendant is charged with Murder, First Degree (Penal Law § 125.27(a)(vii) and (b)), Murder, Second Degree (Penal Law § 125.25(1)) and Reekless or Depraved Indifference Murder, Second Degree (Penal Law & 125.25(2)) relating to this incident. Counts Five and Six both charge Defendant with Rape, First Degree (Penal Law § 130.35(1)), arising out of the alleged rapes of "R. L." on June 6, 1999.

The People allege that defendant raped all three

victims, choked them and beat them about the head. Bloodstains were collected from objects at two of the crime scenes located below the Driving Park **180 Bridge, and at 6 Whitney Street, and at defendant's apartment at 73 Walnut Street, all in the City of Rochester. Semen samples and bloodstains also were collected from the victims and their clothing. All bloodstains and semen samples were compared with blood drawn from the defendant and the victims

At the People's request, the Monroe County Public Safety Laboratory (MCPSL) and Cellmark Diagnostic Laboratory (Cellmark) conducted DNA testing, analyzing different loci or areas of the DNA. Both MCPSL and Cellmark initiated their DNA testing with PCR amplification, but then used different DNA profiling or typing methods. MCPSL used a polymarker reverse dot blot system, the Amplitype PM (Polymarker) & DQA1. Cellmark used a short tandem repeat (STR) analysis.

The MCPSL report indicates the DNA profile of all of the spcrn samples matched exactly the DNA profile of the blood *840 sample of the defendant at six (6) loci analyzed (using the Polymarker and DQA1 analysis). The probability of randomly selecting an unrelated person having the same Polymarker and DQA1/DNA profile as defendant and the sperm fractions on the vaginal swabs from Rosemary Constantino, Sherry Tuthill, and R.L. and on the swab from the knee of Sherry Tuthill is approximately 1 in 6,100 African Americans, 1 in 380,000 Caucasians, 1 in 169,000 Hispanies, and 1 in 221,000 Japanese.

The Polymarker and DQA1/DNA profile of the blood found both in the kitchen and on the porch of defendant's apartment matched the DNA profile of Sherry Tuthill's blood. Finally, the same type of DNA profiling indicated the blood found on a sweatshirt in the defendant's apartment matched the DNA profile of R.L's blood.

Defendant does not dispute the general acceptance by the scientific community of Amplitype PM

187-Misc.2d 838, 725 N:Y:S.2d 178, 2001 N.Y. Slip Op. 21197 (Cite asi: 187 Misc.2d 838, 725 N.Y.S.2d 178)

(Polymarker) & DQA! (DNA) analysis use by the Monroe County Public Safety Laboratory. See People v. Hamilton, 255 A.D.2d 693, 694, 681 N.Y.S.2d 117 (3rd Dept.), Iv. denied 92 N.Y.2d 1032, 684 N.Y.S.2d 497, 707 N.E.2d 452 (1998); People v. Morales, 227 A.D.2d 648, 643 N.Y.S.2d 217 (2nd Dept.), Iv. denied 89 N.Y.2d 926, 654 N.Y.S.2d 729, 677 N.E.2d 301 (1996).

Cellmark's report indicated the DNA profile of all of the sperm samples matched exactly the DNA profile of defendant's blood sample at the thirteen (13) short tandem repeat (STR) loci tested. The probability of randomly selecting an unrelated person having the same STR/DNA profile as defendant and the sperm fractions from the vaginal swabs of Rosemary Constantino, Sherry Tuthill, and R.L. and from the swab from the knee of Sherry Tuthill is approximately 1 in 18 x 10 to the 18th African Americans, and 1 in 6.5 x 10 to the 21st Caucasians.

A STR/DNA profile of the blood found both in the kitehen and on the porch of defendant's apartment matched the STR/DNA profile of Sherry Tuthill's blood. Finally, a STR/DNA profile of blood found on a sweatshirt in the defendant's home matched the STR/DNA profile of R.L.'s blood.

[1] Defendant maintains the Short Tandem Repeat (STR) DNA profiling, using the AmpF/STR Profiler Plus and Cofiler PCR kits are not reliable or generally accepted by the scientific community. Specifically, defendant argues that AmpF/STR Profiler Plus and Cofiler PCR kits have not been subjected to peer review and validation.

This court denied defendant's request for a Frye hearing on the record on March 20, 2001. See Frye, supro. No **181 one contests the admissibility of expert testimony concerning the *841 polymerase chain reaction (PCR) method used in the DNA testing. PCR allows for the amplification or ehemical copying of DNA samples. "The reliability of the PCR method has gained general acceptance in the scientific community." People v. Fontanez,

278 A.D.2d 933, 718 N.Y.S.2d 541, 544 (4th Dept.2000) (citation omitted); see People v. Lin, 267 A.D.2d 256, 256-57, 699 N.Y.S.2d 294 (2nd Dept.1999), lv. denied 94 N.Y.2d 951, 710 N.Y.S.2d 8, 731 N.E.2d 625 (2000); see People v. Hall, 266 A.D.2d 160, 160-61, 700 N.Y.S.2d 105 (1st Dept.1999), lv. denied 94 N.Y.2d 948, 710 N.Y.S.2d 4, 731 N.E.2d 621 (2000); People v. Hamilton, supra. at 694, 681 N.Y.S.2d 117.

PCR short tandem repeat (STR) profiling methods involve the generally accepted procedures entailed with PCR using a number of loci known as short tandem repeats. Short tandem repeats (STR) contain repeat units that are two (2) to six (6) basepairs in length. The STRs can be readily amplified with polymerase chain reaction (PCR).

With the Profiler Plus and Cofiler PCR, visualization of the DNA is accomplished with the use of a fluorescent tag primer. The Profiler Plus and Cofiler PCR target nine and six STRs, respectively. Electrophoresis is done through a capillary instead of a gel as with some other amplification kits. As the DNA, in order of its size, passes through the capillary a laser is directed at it. The laser excites the fluorescent tag, giving off a particular wavelength, which in turn is detected by a machine called a 310 Genetic Analyzer. The fluorescence passing by the window creates a profile of peaks, measured on fluoreseent units. Two peaks will appear for each loeus, one peak for each allele. Through a series of comparisons with controls that are also run on the capillary, one ean translate the peaks into the number of repeats. See National Institute of Standards and Technology, STR Typing Technology Review (January 30, 2001); People v. Pfenning, unpublished, Docket No. 57-4-96 (Vt. Dist. Ct. [Kupersmith, J.] April 6, 2000).

[2] Courts throughout the country have found that the Short Tandem Repeat (STR) DNA profiling, using the AmpF/STR Profiler Plus and Cofiler PCR kits are reliable and generally accepted by the scientific community. People v. Phillips, unpublished (Mich. Cir. Ct., Kent Cty. [Kolenda, J.] Oc-

187 Misc.2d 838, 725 N.Y.S.2d 178, 2001 N.Y. Slip Op. 21197 (Cite as: 187 Misc.2d 838, 725 N.Y.S.2d 178)

tober 25, 2000); People v. Kopp, unpublished (Mich. Cir. Ct., Kent Cty. [Soet, J.] October 20, 2000); People v. Cavin, unpublished, No. 00-4395-FY (Mich. Cir. Ct., Lake Cty. [Cooper, J.] October 18, 2000); People v. Elizarraras, unpublished, Case No. 50651 (Cal. Sup.Ct., Tulare Cty. [Kalashian, J.] October 13, 2000); State v. Dishmon, unpublished, No. 99047345 (Minn. Dist. Ct., Hennepin Cty. [Anderson, J.] March 3, 2000); State v. Lynch, unpublished, CR. No. 98-11390 (Az Sup.Ct., Maricopa Cty. [Reinstein, J.] August 20, 1999); State v. Yisrael, on the record, No. 99-20176CF10A (Florida Cir. Ct., Broward Cty. [Cohn, J.] August 8, 2000); *842 cf. Commonwealth v. Gaynor, unpublished (Mass. Sup.Ct., Hampden Cty. [Ford, J.] April 27, 2000) (assumes acceptability of STR/DNA profiling, using the AmpF/STR Profiler Plus and Cofiler PCR kits). General scientific acceptance, not universal acceptance, is required. "The particular procedure need not be 'unanimously indorsed' by the scientific community but must be 'generally acceptable as reliable.' " People v. Wesley, 83 N.Y.2d 417, 423, 611 N.Y.S.2d 97, 633 N.E.2d 451 (1994), quoting People v. Middleton, 54 N.Y.2d 42, 49, 444 N.Y.S.2d 581, 429 N.E.2d 100 (1981). Cf. People v. Schreck, **182 unpublished, Case No. 98CR2475 (Col. Dist. Ct., Boulder Cty. [Hale, J.] 2000) and People v. Pfenning, supra. (relied upon by the defendant). The People also provided this court with ample abstracts of symposium and conference presentations and articles supporting the validation of both AmpF/STR Profiler Plus and Cofiler PCR kits and STR/DNA profiling in gener-

This court finds, while not alone dispositive, STR is in widespread use in forensic laboratories because low amounts of DNA even in degraded form can be successfully typed. Further, at least three appellate courts have held predecessor PCR/STR DNA profiling kits are reliable and generally accepted by the scientific community. People v. Allen, 72 Cal.App.4th 1093, 85 Cal.Rptr.2d 655 (1999); State v. Jackson, 255 Neb. 68, 582 N.W.2d

317 (Neb.Sup.Ct.1998); Commonwealth v. Rosier. 425 Mass. 807, 685 N.E.2d 739 (Sup. Judicial Ct. 1997); See also, People v. Moevao, unpublished (Cal. Sup.Ct., San Francisco, City & Cty. [Warren, J.] July 24, 2000) (found the forerunner AmpF/STR Blue and AmpF/STR Green kit admissible; after a 25 day hearing with 8 witnesses and 60 exhibits amassing 2300 pages of transcripts). Indeed while ultimately finding the Profiler Plus system unreliable, even the Vermont District Court in People v. Pfenning, supra., acknowledged "the use of fluorescent primers and the generalized use of STRs has been in place for some time, as early as 1990the basic technologies incorporated in Profiler Plus have been utilized as independent entities for longer periods of time are generally recognized as valid scientific techniques." Id. at 49, 685 N.E.2d

Note in *People v. Jose Santiago*, another capital case recently tried in this County, expert testimony concerning the STR/DNA profiling using the AmpF/STR Profiler Plus and Cofiler PCR kits was admitted. *See People v. Santiago*, (99/0210) (Mon. Cty. Ct. [Bristol, J.] 2000). In *Santiago*, the Capital Defender's Office did not seek a *Frye* hearing or contest the reliability or general acceptance in the scientific community of the AmpF/STR Profiler Plus and Cofiler PCR kits

[3] *843 Novel scientific evidence may be admitted without any hearing at all by the trial court. People v. Wesley, supra. at 426, 611 N.Y.S.2d 97, 633 N.E.2d 451, citing Matter of Lahey v. Kelly, 71 N.Y.2d 135, 524 N.Y.S.2d 30, 518 N.E.2d 924 (1987); People v. Middleton, 54 N.Y.2d 42, 49, 444 N.Y.S.2d 581, 429 N.E.2d 100 (1981). As the New York Court of Appeals has found "[t]he modern trend in the law of evidence has been away from imposing a special test on scientific evidence and toward using the 'traditional standards of relevancy and the need for expertise.' "People v. Wesley, supra, citing 1 McCormick, Evidence 203, at 873-74 (4th ed. 1992).

To the extent the court in People v. Schroedel,

187 Misc.2d 838, 725 N.Y.S.2d 178, 2001 N.Y. Slip Op. 21197 (Cite as: 187 Misc.2d 838, 725 N.Y.S.2d 178)

unpublished (Sullivan Cty. Ct. [LaBuda, J.] March 21, 2001) reached an opposite conclusion in a capital case this court disagrees. The Schroedel court granted defendant's request for a Frye hearing, but shifted the burden to defendant of proving by a preponderance of the evidence suppression based on the lack of "reliability and general[] acceptability in the scientific community of the use of amnF/STR [G]reen typing kit and ampF/STR Blue typing kit in DNA profiling methodology used by the New York State laboratory," Id. at 5. The burden of proof in a standard Frye hearing is on the People. The ampF/ STR Green typing kit and ampF/STR Blue typing kit are the direct forerunners to the kits used in this case. This court finds that to hold such a truncated Frye hearing would serve no legitimate purpose in this case.

**183 [4] Defendant also contests the protocols and procedures of both the MCPSL FN* and Cellmark. Defendant asserts that the MCPSL mishandled certain samples resulting in potential contamination, and failed to maintain proper documentation on site in violation of the industry's minimal quality assurance standards. Defendant also questions the accreditation status of the MCPSL. Defendant further claims the technicians employed by Cellmark failed to separate samples under analysis, mislabeled samples, and Cellmark did not properly review the technician's work.

FN* Defendant also does not dispute the general acceptance by the scientific community of Amplitype PM (Polymarker) and DQA1 analysis use by the Monroe County Publie Safety Laboratory. People v. Hamilton, 255 A.D.2d 693, 694, 681 N.Y.S.2d 117 (3rd Dept.)(see record on appeal), Iv. denied 92 N.Y.2d 1032, 684 N.Y.S.2d 497, 707 N.E.2d 452 (1998); People v. Morales, 227 A.D.2d 648, 643 N.Y.S.2d 217 (2nd Dept.), Iv. denied 89 N.Y.2d 926, 654 N.Y.S.2d 729, 677 N.E.2d 301 (1996).

[5] These are questions of foundation or weight

that may be dealt with at trial. To be admissible at trial, scientific evidence must be reliable and generally accepted by the scientific community by a prior court finding and have a proper foundation *844 laid at trial. People v. Wesley, supra. at 422, 611 N.Y.S.2d 97, 633 N.E.2d 451 "Foundation concerns itself with the adequacy of the specific procedures used to generate the particular evidence to be admitted." Id. Defendant shall be permitted to bring the perceived weaknesses in the People's methodology to the jury's attention on cross-examination of the People's expert witnesses. See People v. Vega, 225 A.D.2d 890, 639 N.Y.S.2d 511 (3rd Dept.1996)

Defendant's motion entitled DEF-69 is denied in its entircty.

N.Y.Sup.,2001. People v. Owens 187 Misc.2d 838, 725 N.Y.S.2d 178, 2001 N.Y. Slip Op. 21197



Not Reported in N.Y.S.2d, 2001 WL 856077 (N.Y.Sup.), 2001 N.Y. Slip Op. 40004(U) (Cite as: 2001 WL 856077 (N.Y.Sup.))

NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS, NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT
COUNTY OF MONROE
THE PEOPLE OF THE STATE OF NEW YORK,
v.
JOHN OWENS, Defendant.

Ind. # 547/99 Consolidated with #414/99 DATED: April 20, 2001, Rochester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Special Assistant District Attorney DAVID A. FOSTER, ESQ. Assistant District Attorney

KEVIN M. DOYLE, ESQ. Capital Defender (William T. Baston, Esq., First Deputy Capital Defender, Patricia Warth, Esq., Deputy Capital Defender) PETER J. PULLANO, ESQ. FOR DEFENDANT

EGAN, J.:

*1 This is a death penalty case. On April 19, 2001 Defendant was convicted of two counts of First Degree Murder, and two counts of Rape, First Degree arising out of three separate incidents that occurred within a two month period in 1999. Defendant by Notice of Motion filed January 8, 2001 sought an order requiring an audio tape recording of all proceedings in this case. The People opposed Defendant's motion. This Court denied Defendant's notion on the record on January 22, 2001.

This Court finds no authority in New York, and Defendant cites none, requiring the audio recording of a criminal proceeding in addition to the creation of a stenographic record. Cf. Judiciary Law §§295 & 297 (2001); see also, 22 New York Codes, Rules and Regulations (NYCRR) §218(1)(b) (2001)& 22

NYCRR §§510.11(b), 510.11(b) (2001); People v. Harrison, 85 NY2d 794 (1995) (regarding the stenographic recording of criminal trials). Relying on the oft-cited notion of heightened due process, Defendant avers that the additional precaution of an audio recording is required in a capital case. The Courts of New York uniformly have rejected this argument. See e.g., People v. Bonton, unpublished p. 9 (Sup. Ct., Kings Cty. [Lott, J.] October 18, 1999); cf. People v. Arroyo, unpublished p. 2 (Schoharie Cty. Ct. [Barlett, J.] June 1998). This Court is also not convinced that the contemporaneous audio recording of such proceedings would remedy the potential problem created when two or more people speak at once on the record, as Defendant suggests.

For the forgoing reasons, Defendant's motion entitled DEF-67 was denied in its entircty on January 22, 2001.

This shall constitute the Opinion, Decision and Order of this Court.

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People v. Owens

Not Reported in N.Y.S.2d, 2001 WL 856077 (N.Y.Sup.), 2001 N.Y. Slip Op. 40004(U)

Not Reported in N.Y.S.2d, 2001 WL 1035089 (N.Y.Sup.), 2001 N.Y. Slip Op. 40121(U) (Cite as: 2001 WL 1035089 (N.Y.Sup.))

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NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE THE PEOPLE OF THE STATE OF NEW YORK, V.

JOHN OWENS, Defendant.

Ind. # 547/99 Consolidated with #414/99 DATED: April 12, 2001, Rochester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Special Assistant District Attorney DAVID A. FOSTER, ESQ. Assistant District Attorney FOR THE PEOPLE

KEVIN M. DOYLE, ESQ. Capital Defender (William T. Easton, Esq., First Deputy Capital Defender, Patricia Warth, Esq., Deputy Capital Defender) PETER J. PULLANO, ESQ. FOR DEFENDANT

EGAN, J.:

*1 This is a death penalty case. Defendant is being tried for crimes against three victims arising out of separate incidents that occurred within a two month period in 1999. The presentation of evidence at trial commenced on March 21, 2001.

Counts One and Three of Indictment No. 547/99 arise out of the murder of Rosemarie Constantino, who was killed in the course of a rape in the Maplewood area of the City of Rochester on April 28-29, 1999, and charge Defendant with Murder, First Degree (Penal Law §125.27 (a)(vii) and (b)), and Murder, Second Degree (Penal Law §125.25 (1)), respectively. Counts Two and Four of the same Indictment and Count One of Indictment

No. 414/99 (previously eonsolidated by Order of this Court dated November 22, 1999) arise out of the alleged murder and rape of Sherry Tuthill at 200 Merlin Street, City of Roehester on May 30 - June 1, 1999. See People v. Owens, DA-1, unpublished (Mon. Cty. Ct. [Egan, J.]November 22, 1999). Defendant is charged with Murder, First Degree (Penal Law §125.27 (a)(vii) and (b)), Murder, Second Degree (Penal Law §125.25 (1)) and Reekless or Depraved Indifference Murder, Second Degree (Penal Law §125.25 (2)) relating to this incident. Counts Five and Six both charge Defendant with Rape, First Degree (Penal Law §130.35 (1)), and arise out of the alleged rapes of "R. L." on June 6, 1999.

At the Court's request the parties' submitted proposed jury charges for the guilt phase of trial. On April 10, 2001 the Court provided the parties with a written copy of the charges that it plans on giving to jurors. To the extent Defendant's motion entitled DEF-78^{FN1}, and the People's submission, seck relief due to the variation between this Court's instructions as modified at the charge conference on the record and their respective proposals, these requests are denied.

FNI. This Court also reviewed Defendant's letter dated April 11, 2001 concerning his request for charges on lesser included offenses, and the People's responsive letter of the same date.

Defendant's specific requests to have the jury charged as to the lesser included offenses concerning the counts relating to the deaths of Rosemary Constantino and Sherry Tuthill are granted in part. As lesser included offenses to Murder, Second Degree, Penal Law §125.25 (1) of Rosemary Constantino, the Court will charged the jury concerning Manslaughter in the First Degree, Penal Law §125.20(1) and Manslaughter in the Second Degree, Penal Law §125.15(1). See People v. Ford, 66 NY2d 428, 439-40 (1985).

Not Reported in N.Y.S.2d; 2001 WL 1035089 (N.Y.Sup.), 2001 N.Y. Slip Op. 40121(U) (Cite as: 2001 WL 1035089 (N.Y.Sup.))

*2 This Court denies Defendant's request for a charge on Murder in the Second Degree (felony murder), Penal Law §125.25(3), Murder in the Second Degree (depraved indifference murder), Penal Law §125.25(2), and Rape in the First Degree, Penal Law §130.35(1) as lesser included offenses to the First Degree Murder charge relating to the death of Rosemary Constantino. See Criminal Procedure Law ("CPL") §1.20 (37) (2001); People v. Glover, 57 NY2d 61, 63-64 (1982); People v. Bryant, 85 AD2d 575, 576 (1st Dept. 1981) citing People v. Berzups, 49 NY2d 417, 427 (1980); see also, People v. Stokes, 88 NY2d 618 (1996).

As lesser included offenses to Depraved Indifference Murder, Second Degree, Penal Law §125.25 (2), of Sherry Tuthill, the Court will charge the jury concerning Manslaughter in the First Degree, Penal Law §125.20(1), and Manslaughter in the Second Degree, Penal Law §125.15 (1). This Court denies Defendant's request for a charge on Rape in the First Degree, Penal Law §130.35(1) as a lesser included offense to the First Degree Murder charge relating to the death of Sherry Tuthill.

Further, the People by letter dated August 30, 2000 and in their Objections to Defendant's Proposed Jury Instructions (Def-78) seek to have this Court revisit its earlier decision on severance. This Court by its decision dated August 17, 2000 severed for trial one count alleging Defendant raped a fourth and different victim "S.C." People v. Owens, DEF-32, unpublished (Sup. Ct. Mon. Cty. [Egan, J.] August 17, 2000).

The People argue the Court's denial of Defendant's request to sever the remaining sets of charges related to the other three victims under Criminal Procedure Law (CPL) §200.20(2)(e), in absence of an ex-parte in camera submission by Defendant was in error. The People maintain that Defendant's bare request in his supplemental papers entitled Supplement and Reply to DEF-32 filed on July 17, 2001 to make such an ex-parte submission concerning his need to clarify the inconsistencies in his statement

to police concerning the murder of Sherry Tuthill and to refrain from testifying concerning the alleged murder of Rosemary Constantino triggered his absolute right to a hearing under CPL §200.20 (3)(b)(ii).

The Appellate Division for the Fourth Department specifically rejected this narrow interpretation of CPL §200.20(3). People v. Burrows, _____ AD2d ____, ___, 2001 NY App Div Lexis 2779 (March 21, 2001) (appeal from judgment of Monroe County Court Judge David D. Bgan). This Court having found that Defendant failed to make the threshold, "convincing showing that he had important testimony to give concerning one set of charges" or to "refrain concerning [the other] set of charges, declines to amend its carlier decision to include a reference to CPL §200.20(2)(b), as the People request.

*3 The People also urge that this Court erred in not addressing their alternate claim that each set of charges are properly joinable under CPL §200.20 (2)(b) because the proof of each "would be material and admissible as evidence in chief upon a trial" of the others since the erimes involved "sufficiently unique modus operandi that proof of one is relevant to issues [inter alia] of identity and intent." See Id. This Court disagrees. Despite the People's objections, this Court will charge the jury with a modified version of Crinninal Jury Instructions (CJI) 5.39 on Joinder of Offenses, as provided to the parties.

The People's request to amend this Court's earlier decision entitled DEF-32 is denied. Both the People's and Defendant's requests regarding proposed jury instructions (DEF-78) are denied in part and granted in part as discussed above.

This shall constitute the Opinion, Decision and Order of this Court.

ZYNY
People v. Owens
Not Reported in N.Y.S.2d, 2001 WL 1035089
(N.Y.Sup.), 2001 N.Y. Slip Op. 40121(U)



Not Reported in N.Y.S.2d, 2001 WL 856030 (N.Y.Sup.), 2001 N.Y. Slip Op. 40002(U) (Cite as: 2001 WL 856030 (N.Y.Sup.))

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NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE THE PEOPLE OF THE STATE OF NEW YORK,

JOHN OWENS, Defendant.

Ind. # 547/99 Consolidated with #414/99 DATED: April 24, 2001, Roehester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Special Assistant District Attorney DAVID A. FOSTER, ESQ. Assistant District Attorney

KEVIN M. DOYLE, ESQ. Capital Defender (William T. Easton, Esq., First Deputy Capital Defender, Patricia Warth, Esq., Deputy Capital Defender) PETER J. PULLANO, ESQ. FOR DEFENDANT

EGAN, J.:

*1 This is a death penalty ease. On April 19, 2001 Defendant was convicted of two counts of First Degree Murder, and two counts of Rape, First Degree arising out of three separate incidents that occurred within a two month period in 1999. Defendant by Notice of Motion filed April 20, 2001 sceks an order prohibiting the mid-trial excusal of a seated juror without Defendant's written consent. The People have not opposed Defendant's motion.

Criminal Procedure Law ("CPL") §400.27(2) provides in part that:

Before proceeding with the jury that found the defendant guilty, the court shall determine whether any juror has a state of mind that is likely to preclude the juror from rendering an impartial decision

based upon the evidence adduced during the proceeding.... In the event the court determines that a juror has such a state of inind, the court shall discharge the juror and replace the juror with the alternate juror whose name was first drawn and called

Defendant argues that this Court must obtain his written consent if it excuses a seated juror before the jury commences deliberations on sentencing for either the reason set forth in CPL §400.27 (2), or for any other reason. Defendant relies on CPL §270.35 that provides in part:

If an alternate juror or jurors are available for service, the court must order that the discharged juror be replaced by the alternate juror whose name was first drawn and called, provided, however, that if the trial jury has begun its deliberations, the defendant must eonsent to such replacement. Such consent must be in writing and must be signed by the defendant in person in open court in the presence of the court.

This Court finds Defendant's reliance on CPL §270.35 is misplaced. As Defendant points out the recently enacted CPL §400.27 is silent on whether a eourt must obtain a Defendant's consent before it excuses a seated juror, and replaces him with an alternate juror. CPL §400.27 entitled "Procedure for Determining Sentence upon Conviction for the Offense of Murder in the First Degree" specifically relates to a senteneing hearing after a Defendant's conviction for First Degree Murder, and thus by definition addresses a post-deliberation proceeding. This Court finds that CPL §400,27's silence on the requirement of Defendant's eonsent marks a clear departure by the legislature from the constraints of CPL §270.35. This Court will not undermine the New York legislature's decision not to require a court to obtain a Defendant's consent before excusing and replacing a scated juror after a jury has fully deliberated and convicted a Defendant of First Degree Murder. This Court notes that the require-

Not Reported in N.Y.S.2d, 2001 WL 856030 (N.Y.Sup.), 2001 N.Y. Slip Op. 40002(U) (Cite as: 2001 WL 856030 (N.Y.Sup.))

ment of CPL §270.35 is also inapplicable since the seated jurors have not yet begun deliberating on Defendant's sentence.

For the foregoing reasons, Defendant's motion entitled DEF-80 is denied in its entirety.

This shall constitute the Opinion, Decision and Order of this Court.

ZYNY
People v. Owens
Not Reported in N.Y.S.2d, 2001 WL 856030
(N.Y.Sup.), 2001 N.Y. Slip Op. 40002(U)

Westlaw.

Page 1

187 Mise.2d 944, 727 N.Y.S.2d 275, 2001 N.Y. Slip Op. 21230 (Cite as: 187 Misc.2d 944, 727 N.Y.S.2d 275)

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Supreme Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

John F. OWENS, Defendant.

April 27, 2001.

Defendant was convicted of two counts of first degree murder and two counts of first degree rape arising out of three separate incidents. Prior to capital sentencing, defendant moved court to revisit prior decision in which court held sentencing statute constitutional. The Supreme Court, Monroe County, David D. Egan, J., held that defendant failed to establish unconstitutionality or inapplicability of anticipatory deadloek jury instruction beyond reasonable doubt.

Motion denied in part, and granted in part.

West Headnotes

Sentencing and Punishment 350H \$\ightharpoonup 1780(3)

350H Senteneing and Punishment
350HVIII The Death Penalty
350HVIII(G) Proceedings
350HVIII(G)3 Hearing
350Hk1780 Conduct of Hearing
350Hk1780(3) k. Instructions. Most

Cited Cases

Defendant failed to prove beyond a reasonable doubt that anticipatory deadlock jury instruction on sentence defendant would receive it jury were unable to agree on sentence in capital murder trial was unconstitutional and inapplicable; instruction correctly advised jury that non-unanimous verdict was a final verdict, and did not tip scales in favor of death. McKinney's CPL § 400.27, subd. 10.

**276*944 Kevin M. Doyle, Capital Defender (William T. Easton and Patricia Warth of counsel), and Peter J. Pullano, for defendant. Howard R. Relin, District Attorney of Monroe County (Michael C. Green and David A. Foster of counsel), for plaintiff.

DAVID D. EGAN, J.

This is a death penalty ease. On April 19, 2001 Defendant was convicted of two counts of First Degree Murder, and two counts of First Degree Rape arising out of three separate incidents that occurred within a two month period in 1999.

Criminal Procedure Law (CPL) § 400.27(10) provides that, after rendering a guilty verdict but before sentencing, the court shall instruct the jury that they must reach a unanimous decision concerning whether to impose a sentence of death or life imprisonment without the *945 possibility of parole. CPL § 400.27(10) further requires the court to instruct the jury that if they are unable to reach a unanimous decision concerning sentencing, "the court will sentence the defendant to a term of imprisonment with a minimum term of between twenty and twenty-five years and a maximum term of life." CPL § 400.27(10). This Court previously found that Defendant failed to prove beyond a reasonable doubt that CPL § 400.27(10) was unconstitutional, and declined to refrain from instructing the jury concerning the consequences of not reaching a unanimous decision on sentencing. People v. Owens, DEF-21 unpublished (Mon. Cty. Ct. [Egan, J.] May 30, 2000). In the midst of the sentencing proceeding, Defendant asks this Court to revisit its earlier decision. See Id.

Defendent argues that this anticipatory deadlock instruction may cocree jurors who favor a life sentence without the possibility of parole to vote for death, simply to avoid the more lenient sentence. Defendant further contends that the "deadlock instruction would inject intolerable arbitrariness and irrationality into sentencing in capital cases even if it proves just as likely to influence death jurors as life-without-parole jurors to change 187 Misc.2d 944, 727 N.Y.S.2d 275, 2001 N.Y. Slip Op. 21230 (Cite as: 187 Misc.2d 944, 727 N.Y.S.2d 275)

their votes" rendering CPL § 400,27(10) unconstitutional.

The People oppose Defendant's motion, but do not object to this Court instructing the jury on the potential maximum and minimum sentences Defendant could receive, based on his actual convictions, in the event the jury cannot reach a unanimous agreement on sentencing.

This Court again finds Defendant has failed to prove beyond a reasonable doubt that the deadlock instruction of CPL § 400.27(10) is unconstitutional. As this Court noted in its prior decision:

The courts of New York have almost uniformly rejected the notion that CPL § 400.27(10) is unconstitutional. People v. Santiago, unpublished, p. 3 (Mon. Cty. Ct. [Bristol, J.] (January 18, 2000); People v. Gordon, NYLJ, p. 32, col. 6 (October 29, 1998); People v. Van Dyne, unpublished, p. 4 (Mon. Cty. Ct. [Marks, J.] (September 2, 1998); People v. Parker, unpublished, p. 38-41 (Eric Cty. Ct. [D'Amico, J.] (July 2, 1998); People v. Shulman, NYLJ p. 35, col. 4 (January 30, 1998); People v. Mateo, 175 Misc.2d 192, 225, 664 N.Y.S.2d 981 (Mon.Cty.Ct.1997). While one court has found that CPL § 400.27(10) is unconstitutional, and refused to instruct the jury in *946 anticipation of a potential deadlock [People v. Harris, 177 Misc.2d 160, 164, 677 N.Y.S.2d 659 (Sup.Ct. Kings Co.1998)], that jury later inquired on its own about the consequences of not reaching a unanimous verdict, and ultimately, sentenced that defendant to death.

This Court agrees with the rationale of New Jersey's highest court when it refused to invalidate a similar anticipatory **277 deadlock instruction, "to hide from the jury the full range of its sentencing options, thus permitting its decision to be based on uninformed and possibly inaccurate speculation, is to mock the goals of rationality and consistency required by modern death penalty jurisprudence." State v. Ramseur, 106 N.J. 123, 309, 524 A.2d 188, (1987); see also, State v.

Brown, 138 N.J. 481, 651 A.2d 19 (1994) (finding NJSA 2C:11-3f constitutional); cf. Jones v. United States, 527 U.S. 373, 383, 119 S.Ct. 2090, 144 L.Ed.2d 370 (1999).

The anticipatory deadlock instruction correctly advises the jury that a non-unanimous verdict is a final verdict. See People v. Shulman, supra. Nor does this Court find that the instruction tips the scales in favor of death. Cf. People v. Harris, supra. It is as likely that those jurors who favor life without the possibility of parole will persuade death-prone jurors to change their vote to avoid a non-unanimous verdict, and its associated lenient sentence. Instead the deadlock instruction actually benefits the Defendant by encouraging all jurors to stand by their beliefs, since a non-unanimous verdict is a final verdict, consistent with their earlier vote for conviction.

People v. Owens, DEF-21, supra.

This Court however will instruct the jury before deliberations on the range of sentencing options at its disposal based on Defendant's actual convictions for both capital and non-capital offenses should the jury ultimately reach a unanimous sentencing determination.

Defendant's motion is denied in part and granted in part as discussed fully in this decision.

N.Y.Sup.,2001. People v. Owens 187 Misc.2d 944, 727 N.Y.S.2d 275, 2001 N.Y. Slip Op. 21230

Westlaw.

Page 1

Not Reported in N.Y.S.2d, 2001 WL 880785 (N.Y.Sup.), 2001 N.Y. Slip Op. 40041(U) (Cite as: 2001 WL 880785 (N.Y.Sup.))

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NOT APPROVED BY REPORTER OF DE-CISIONS FOR REPORTING IN STATE RE-PORTS. NOT REPORTED IN N.Y.S.2d.

STATE OF NEW YORK SUPREME COURT COUNTY OF MONROE THE PEOPLE OF THE STATE OF NEW YORK

JOHN F. OWENS, Defendant.

Ind, #547/99 Consolidated with Ind. #414/99 DATED: May 8, 2001, Rochester, New York

HOWARD R. RELIN, ESQ. Monroe County District Attorney MICHAEL C. GREEN, ESQ. Assistant District Attorney DAVID A. FOSTER, ESQ. Assistant District Attorney FOR THE PEOPLE

KEVIN M. DOYLE, ESQ. Capital Defender (William T. Easton, Esq., First Deputy Capital Defender, Patricia Warth, Esq., Deputy Capital Defender) PETER J. PULLANO, ESQ.

EGAN, J.:

*1 This is a death penalty ease. At the eonelusion of the presentation of evidence in the sentencing phase of trial, Defendant by Notice of Motion filed on April 27, 2001 renewed his challenge to Criminal Procedure Law ("CPL") \$400,27(11), Dcfendant asked this Court to revisit its decision entitled DEF-28, entered on August 30, 2000 where this Court concluded that the second-step of the senteneing determination was not unconstitutionally vague or standardless. People v. Owens, DEF-28, unpublished, pp.2-3 (Sup. Ct. Mon. Cty. [Egan, J.] August 30, 2000). The People made no submission in response to Defendant's renewed motion. This Court denied Defendant's motion on the record finding nothing in his additional submission to alter its earlier decision

Defendant argued that since his first motion "developments have occurred that create an unacceptable risk that impermissible factors will infect the sentencing proceeding" including (1) this Court's denial of Defendant's severance motion; (2) the alleged admission of prejudicial and inflammatory evidence of nonstatutory aggravation during the guilt phase of trial; (3) alleged prosecutorial misconduct during summation; and (4) the People's commission and use of community attitudes survey to select a jury predisposed to consider race and other illegitimate factors at sentencing. This Court's earlier decisions, both written and on the record. denied relief to Defendant on each of these specific grounds. See People v. Owens, DEF-32, unpublished, pp.2-3 (Sup. Ct. Mon. Cty.[Egan, J.] August 16, 2000); People v. Owens, DEF-78 & 32 2nd Decision, unpublished (Sup. Ct. Mon. Cty. [Egan, J.] April 12, 2001); People v. Owens, DEF-47, unpublished (Sup. Ct. Mon. Cty.[Egan, J.] December 1, 2000); People v. Owens, DEF-75, _ AD2d published (Sup. Ct. Mon. Cty.[Egan, J.] March 23, 2001); People v. Owens, DEF-73, ___ AD2d_ 2001 NY Misc. Lexis 86 (Sup. Ct. Mon. Cty 2001).

As this noted in its earlier decision addressing the constitutionality of CPL §400.27 (11)(a):

CPL §400.27 (11) (a) provides in part: "The jury may not direct imposition of a sentence of death unless it unanimously finds beyond a reasonable doubt that the aggravating factor or factors substantially outweigh the mitigating factor or factors established, if any, and unanimously determines that the penalty of death should be imposed." Id. Defendant specifically claims that when the jury undertakes the second tier determination, it is not guided by objective standards, and thus is allowed the "unbridled discretion" denounced in Penry v. Lynaugh, 492 US 302, 326 (1989).

To pass constitutional muster, the death penalty may "not be imposed under sentencing procedures that create[] a substantial risk that it [will] be inNot Reported in N.Y.S.2d, 2001 WL 880785 (N.Y.Sup.), 2001 N.Y. Slip Op. 40041(U) (Cite as: 2001 WL 880785 (N.Y.Sup.))

flicted in an arbitrary and capricious manner." Gregg v. Georgia, 428 US 153, 188 (1976) (reaffirming the holding in Furman v Georgia, 408 US 238 (1972).) Thus, a "State must establish rational criteria that narrow the decisionnaker's judgment as to whether the circumstances of a particular defendant's case meet the threshold." McCleskey v. Kemp, 481 US 279, 305 (1987).

The capital sentencing scheme meets the standards of the New York and United States Constitutions. Accord People v. McIntosh, 178 Misc. 2d 433 (Dutchess Cty. Ct. 1998); People v. Harris, 177 Misc. 2d 368 (Kings Cty. Ct. 1998); People v. Mateo, 175 Misc 2d 192, 226 (Mon. Cty. Ct. 1997). Penal Law §125.27(1) " 'genuinely narrow[s] the elass of persons eligible for the death penalty' " by delineating twelve distinct aggravating factors that raise the gravity of their erimes above other murders. Sec Lowenfield v. Phelps, 484 US 231, 244 (1988) FN1. CPL §400.27 then employs a balancing test, justifying the imposition of a death sentence in only those cases where those aggravating factors proved at trial substantially outweigh all mitigating evidence. See CPL §§400.27(3), (6), and (11). CPL §400.27(3) provides for an individualized sentencing determination by allowing the Defendant to ehallenge any aggravating factor by presenting mitigating evidence "concerning the crime, the defendant's state of mind or condition at the time of the crime. . ." even in hearsay form. See CPL §400.27(9) (f). An individual juror may consider any mitigator, if it was proved by Defendant to the satisfaction of such juror by a preponderance of the evidence. Unanimity is not required, CPL §400.27 (11) (a).

FN1. As the United States Supreme Court noted there is '...no reason why this narrowing function may not be performed by jury findings at either the sentencing phase of the trial or the guilt phase.' Lowenfield, supra, at 244-45.

The Supreme Court has held that such a weighing process alone is sufficient for the imposition of

a death sentence. See Blystone v Pennsylvania, 494 US 299 (1990); Boyde v California, 494 US 370 (1990). Instead CPL §400.27(11)(a) provides an additional safeguard for a defendant facing the death penalty. The weighing process is a prerequisite to the sentencing jury's "unanimous determin[ation] that the penalty of death should be imposed." Id. CPL §400.27(11)(a) thus empowers the jury to exercise mercy and decline to impose the death penalty even if it has found, after weighing both aggravating and mitigating factors, that death is otherwise warranted. Despite Defendant's arguments otherwise, no further guidelines are constitutionally required at this stage of the jury's deliberations. See Tuilaepa v. California, 512 US 967, 979-80 (1994) ("[a] eapital senteneer need not be instructed how to weigh any particular faet in the capital sentencing decision.")

Defendant's argument that CPL §400.27(11) undermines appellate review is also without merit. Subparagraph (b) of that section specifically provides, "[i]f the jury directs imposition of either a sentence of death or life imprisonment without parole, it shall specify on the record those mitigating and aggravating factors considered and those mitigating factors established by the defendant, if any." CPL §400.27(11)(b).

Defendant also argues that since CPL §400.27 (11)(a) provides for an individual juror's consideration of mitigating factors it is unconstitutionally permissive. The statute states that "[a]ny member or members of the jury who find a mitigating factor to have been proven by the defendant by a preponderance of the evidence may consider such factor established regardless of the number of jurors who concur that the factor has been established." Id. (Emphasis added.) Defendant claims that the use of the permissive word "may" instructs a juror not to eonsider a mitigating factor even if he believes it was established. This Court finds that the plain meaning of the statute actually bodes in favor of the Defendant, by eneouraging individual jurors to stand by their personal convictions, "regardless of

Not Reported in N.Y.S.2d, 2001 WL 880785 (N.Y.Sup.), 2001 N.Y. Slip Op. 40041(U) (Cite as: 2001 WL 880785 (N.Y.Sup.))

the number of jurors who concur" with them. See $\operatorname{Id}\nolimits.$

People v. Owens, DEF-28, supra. at 1-3.

Defendant's renewed motion entitled DEF-89 is denied in its entirety.

This shall constitute the Opinion, Decision and Order of this Court.

ZYNY
People v. Owens
Not Reported in N.Y.S.2d, 2001 WL 880785
(N.Y.Sup.), 2001 N.Y. Slip Op. 40041(U)



188 Misc.2d 392, 729 N.Y.S.2d 285, 2001 N.Y. Slip Op. 21298 (Cite as: 188 Misc.2d 392, 729 N.Y.S.2d 285)

H

Supreme Court, Monroe County, New York.
The PEOPLE of the State of New York, Plaintiff,

John F. OWENS, Defendant.

May 30, 2001.

Following conviction for first degree murder and first degree rape, defendant moved for permission to give unsworn allocution after summations in penalty phase. The Supreme Court, Monroe County, David D. Egan, J., held that there was no right to unsworn allocution during penalty phase of capital case.

Motion denicd.

West Headnotes

[1] Sentencing and Punishment 350H 5359

350H Sentencing and Punishment
350HII Sentencing Proceedings in General
350HII(G) Hearing
350Hk355 Allocution
350Hk359 k. Requisites and Sufficiency. Most Cited Cases

Defendant, charged with capital crime, did not have right to unswom allocution following summations, in sentencing portion of trial. McKinney's CPL § 400.27.

[2] Sentencing and Punishment 350H 5

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(G) Proceedings
350HVIII(G)3 Hearing
350Hk1780 Conduct of Hearing
350Hk1780(2) k. Arguments and
Conduct of Counsel. Most Cited Cases
Counsel for defendant in capital case could in-

clude, in summation during penalty phase of trial, statements that defendant wished to make to jury during prohibited allocution. McKinney's CPL § 400.27.

**285*392 Kevin M. Doyle, Capital Defender (William T. Easton and Patricia Warth of counsel), and Peter J. Pullano for Defendant.

Howard R. Relin, District Attorney of Monroe County (Michael C. Green and David A. Foster of counsel), for plaintiff.

DAVID D. EGAN, J.

On April 19, 2001 a jury convicted Defendant, John F. Owens, of two counts of First Degree Murder pursuant to Penal Law § 125.27(1)(a)(vii) relating to the death of two separate victims, and two counts of First Degree Rape pursuant to Penal Law § 130.35 relating to a third victim. Just before the presentation of evidence in the sentencing phase of trial, Defendant by Notice of Motion filed on April 23, 2001 sought permission *393 to give an unsworn allocution following summations. The People opposed Defendant's motion.

[1][2] This Court finds that Defendant has no statutory nor constitutional right to allocute before a sentencing jury in a capital case. See McGautha v. California, 402 U.S. 183, 91 S.Ct. 1454, 28 L.Ed.2d 711 (1971). While Defendant correctly points out that Criminal Procedure Law ("CPL") § 380.50(1) FN1 allows a defendant to allocate before a sentencing court in a non-capital case, senteneing in a death penalty case is directed not by a judge but a by a jury. Indeed CPL § 400.27, which embodies New York's intricate death penalty scntencing scheme, does not provide for a Defendant's unsworn allocution. CPL § 400.27 satisfies the constitutional mandate "of individualized ... sentencing in a capital case by providing for an expansive presentation of any mitigating evidence to **286 the sentencing jury." People v. Harris, unpublished, 188 Misc.2d 392, 729 N.Y.S.2d 285, 2001 N.Y. Slip Op. 21298 (Cite as: 188 Misc.2d 392, 729 N.Y.S.2d 285)

p. 3 (Sup.Ct., Kings Cty. [Feldman, J.] 1998). For these reasons, this Court denied Defendant's request in its entirety on the record on April 25, 2001, and thus specifically rejected the reasoning of the courts in the capital cases of People v. Shulman, unpublished, p. 2 (Suffolk Cty. Ct. [Pitts, J.] 1999) and People v. Harris, supra. at 3-4. This Court finds however, that nothing would limit defense counsel from reciting Defendant's words in its closing statements.

FN1. Criminal Procedure Law § 380.50 provides in relevant part:

At the time of pronouncing sentence, the court must accord the prosecutor an opportunity to make a statement with respect to any matter relevant to the question of sentence. The court must then accord counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant also has the right to make a statement personally in his or her own behalf, and before pronouncing sentence the court must ask the defendant whether he or she wishes to make such a statement.

Defendant's renewed motion entitled DEF-86 is denied in its entirety.

N.Y.Sup.,2001. People v. Owens 188 Mise.2d 392, 729 N.Y.S.2d 285, 2001 N.Y. Slip Op. 21298



51 A.D.3d 1369, 856 N.Y.S.2d 793, 2008 N.Y. Slip Op. 04158 (Cite as: 51 A.D.3d 1369, 856 N.Y.S.2d 793)

Н

Supreme Court, Appellate Division, Fourth Department, New York.

The PEOPLE of the State of New York, Respondent,

John OWENS, Defendant-Appellant.

May 2, 2008.

Background: Following jury trial, defendant was convicted in the Supreme Court, Monroe County, David D. Egan, J., of murder in the first degree and rape in the first degree. Defendant appealed.

Holdings: The Supreme Court, Appellate Division, held that:

- (1) defendant was not denied his right to a fair trial before an unbiased fact finder;
- (2) rape counts were properly joined with murder counts;
- (3) rape victim's testimony regarding defendant's statements was properly admitted;
- (4) testimony from witness and police officer in violation of trial court ruling was harmless error;
- (5) instructions on the elements of intentional felony murder fairly instructed the jury on the correct principles of law; and
- (6) statute regarding intentional felony murder in the first degree was not unconstitutionally underinclusive.

Affirmed.

West Headnotes

[1] Jury 230 \$\infty 131(6)

230 Jury

230V Competency of Jurors, Challenges, and Objections

230k124 Challenges for Cause 230k131 Examination of Juror 230k131(6) k. Bias and Prejudice.

Most Cited Cases

Defendant was not denied his right to a fair trial before an unbiased fact finder; there was no indication that any jurors were racially biased, the trial court allowed unlimited voir dire on the issue of racial bias, and defendant employed his own jury consultant.

[2] Criminal Law 110 @= 620(1)

110 Criminal Law

110XX Trial

110XX(A) Preliminary Proceedings

110k620 Joint or Separate Trial of Separate Charges

110k620(1) k. In General, Most Cited

Cases

Rape counts were properly joined with murder counts; rape in the first degree was the underlying felony for each count of felony murder, and the State had to establish defendant's rape of the felony murder victims.

[3] Criminal Law 110 €==364(4)

110 Criminal Law

110XVII Evidence

110XVII(E) Res Gestac

110k362 Res Gestae; Excited Utterances

110k364 Acts and Statements of Ac-

cused

110k364(3) After Commission of

Crime

110k364(4) k. Incriminating

Conduct and Statements After Commission of Offense, Most Cited Cases

Criminal Law 110 €== 406(6)

110 Criminal Law

110XVII Evidence

110XVII(L) Admissions

110k405 Admissions by Accused

110k406 In General

110k406(6) k. Admissions as to

51 A.D.3d 1369, 856 N.Y.S.2d 793, 2008 N.Y. Slip Op. 04158 (Cite as: 51 A.D.3d 1369, 856 N.Y.S.2d 793)

Commission of or Participation in Commission of Crime. Most Cited Cases

Rape victim's testimony that during the course of the rape defendant stated, "I did this before. Sooner or later I'm going to get caught. I might as well face my consequences," was properly admitted as part of the res gestae of the rape counts, and it constituted an admission with respect to those counts.

[4] Criminal Law 110 (== 396(1)

110 Criminal Law

110XVII Bvidence

110XVII(I) Competency in General

110k396 Evidence Admissible by Reason of Admission of Similar Evidence of Adverse Party 110k396(1) k. In General, Most Cited

Cases

Witnesses 410 €== 288(2)

410 Witnesses

410III Examination

410III(C) Re-Examination

410k285 Redirect Examination 410k288 New Matter on Cross-

410k2 Examination

410k288(2) k. Particular Subjects

of Inquiry. Most Cited Cases

By suggesting during defendant's crossexamination of identifying witness that the witness had identified defendant in order to collect a \$5,000 reward, defendant opened the door to questioning of that witness and a police officer that the witness identified defendant six days before he inquired about the reward.

[5] Criminal Law 110 \$\infty\$ 1170.5(1)

110 Criminal Law

110XXIV Review

110XXIV(Q) Harmless and Reversible Error 110k1170.5 Witnesses

110k1170.5(1) k. In General. Most

Cited Cases

Although the State violated a ruling of the trial eourt by eliciting testimony from the witness and the police officer that the witness had identified defendant in a photographic array, the violation of that ruling was harmless error.

[6] Homicide 203 @== 1409

203 Homieide

203XII Instructions

203XII(B) Sufficiency

203k1408 Killing in Commission of or with Intent to Commit Other Unlawful Aet

203k1409 k. In General. Most Cited

Cases

Trial court's jury instructions on the elements of intentional felony murder, which tracked the language contained in the Pattern Criminal Jury Instructions, fairly instructed the jury on the correct principles of law to be applied to the case, McKinney's Penal Law § 125.27(1)(a)(vii).

[7] Homicide 203 \$\sim 576

203 Homicide

203III Homieide in Commission of or with Intent to Commit Other Unlawful Act

203III(A) In General

203k576 k. Constitutional and Statutory Provisions. Most Cited Cases

Statute regarding intentional felony murder in the first degree was not unconstitutionally underinclusive because certain predicate felonies for felony murder in the second degree were not included as predicate felonies for intentional felony murder in the first degree; the predicate felonies identified by defendant as having been irrationally omitted from the statute were offenses that had less potential for violence and physical injury than those included therein, and thus, the decision of the Legislature to exclude those predicate felonies was rational. U.S.C.A. Const.Amend. 14; McKinney's Penal Law § 125.27(1)(a)(vii).

**795 William G. Pixley, Rochester, for Defendant-Appellant.

51 A.D.3d 1369, 856 N.Y.S.2d 793, 2008 N.Y. Slip Op. 04158 (Cite as: 51 A.D.3d 1369, 856 N.Y.S.2d 793)

Michael C. Green, District Attorney, Rochester (Wendy Evans Lehmann of Counsel), for Respond-

PRESENT: SCUDDER, P.J., SMITH, CENTRA, PERADOTTO, AND PINE, JJ.

MEMORANDUM:

[1] *1370 Defendant appeals from a judgment convicting him, after a jury trial, of two counts of murder in the first degree (Pcnal Law § 125.27 [1] [alfviil), as well as two counts of rape in the first degree (§ 130.35 [1]) with respect to a third victim. We reject desendant's contention that Supreme Court erred in refusing to direct the People to disclose records pertaining to a "community attitude survey" that was commissioned by the People prior to jury selection and in refusing to order an inquiry into the possible racial bias in the jury selection process caused by the People's use of that survey. The record establishes that the survey was completed several weeks prior to the commencement of jury selection and that none of the prospective jurors who ultimately were selected had participated in the survey. There is no indication in the record that any of the jurors were racially biased. Furthermore, we note that the court allowed unlimited voir dire on the issue of racial bias and that defendant employed his own jury consultant, who was present throughout jury selection. We therefore conclude that defendant was not denied "his right to a fair trial before an unbiased fact finder" (People v. Arnold, 96 N.Y.2d 358, 362, 729 N.Y.S.2d 51, 753 N.E.2d 846).

[2] We also reject defendant's contention that the court abused its discretion in refusing to sever the murder counts from the *1371 rape counts for trial (see CPL 200.20[3]; see generally People v. Lane, 56 N.Y.2d 1, 7, 451 N.Y.S.2d 6, 436 N.E.2d 456; People v. Brown, 254 A.D.2d 781, 782, 680 N.Y.S.2d 328, lv. denied 92 N.Y.2d 1029, 684 N.Y.S.2d 494, 707 N.E.2d 449). Rape in the first degree was the underlying felony for each count of

felony murder, and the People thus had to establish defendant's rape of the felony murder victims. We therefore eonclude that the counts were properly joined inasmuch as the offenses are "similar in law" (CPL 220.20[2][c]; see generally Brown, 254 A.D.2d 781, 680 N.Y.S.2d 328, lv. denied 92 N.Y.2d 1029, 684 N.Y.S.2d 494, 707 N.E.2d 449), and we further conclude that defendant failed to establish good cause for severance (see CPL 220.20 [3]).

[3] We reject defendant's further contention that the court erred in permitting the victim who was the subject of the two rapc counts to testify that during the course of the rape defendant stated, "I did this before. Sooner or later I'm going to get caught. I might as well face my consequences." The statement was properly admitted as part of the res gestac of the rape counts (see People v. Lewis, 25 A.D.3d 824, 826, 806 N.Y.S.2d 317, Iv. denied 7 N.Y.3d 791, 796, 821 N.Y.S.2d 821, 826, 854 N.E.2d 1285, 1290; People v. Ayala, 273 A.D.2d 40, 709 N.Y.S.2d 528, Iv. denied 95 N.Y.2d 863, 715 N.Y.S.2d 217, 738 N.E.2d 365; People v. Chavys, 263 A.D.2d 964, 965, 695 N.Y.S.2d 438, lv. denied 94 N.Y.2d 821, 702 N.Y.S.2d 591, 724 N.E.2d 383), and it constituted an admission with respect to those counts (see generally People v. Geddes, 49 A.D.3d 1255, 856 N.Y.S.2d 336; **796 People v. Figgins, 48 A.D.3d 1042, 849 N.Y.S.2d 845). We note that the court properly instructed the jury to consider the testimony only with respect to the rape counts, and not the murder counts, thus limiting " 'the possibility of prejudice' " (People v. Dozier, 32 A.D.3d 1346, 1347, 821 N.Y.S.2d 726, lv. dismissed 8 N.Y.3d 880, 832 N.Y.S.2d 492, 864 N.E.2d 622; see generally People v. Dickson, 21 A.D.3d 646, 647, 799 N.Y.S.2d 657).

[4][5][6] Defendant failed to preserve for our review his contention that the court erred in permitting a lay witness to give an expert opinion, i.e., that the bag that he observed defendant holding contained cocaine (see generally People v. Wade, 38 A.D.3d 1315, 1316, 832 N.Y.S.2d 734, by.

51 A.D.3d 1369, 856 N.Y.S.2d 793, 2008 N.Y. Slip Op. 04158 (Cite 8s; 51 A.D.3d 1369, 856 N.Y.S.2d 793)

denied 8 N.Y.3d 992, 838 N.Y.S.2d 495, 869 N.E.2d 671; People v. Highsmith, 254 A.D.2d 768, 769, 679 N.Y.S.2d 758, Iv. denied 92 N.Y.2d 983, 683 N.Y.S.2d 764, 706 N.E.2d 752, 92 N.Y.2d 1033, 684 N.Y.S.2d 498, 707 N.E.2d 453). In any event, the record establishes that the witness merely surmised that the bag contained cocaine. By suggesting during defendant's cross-examination of that witness that the witness had identified defendant in order to collect a \$5,000 reward, defendant opened the door to questioning of that witness and a police officer that the witness identified defendant six days before he inquired about the reward (see generally People v. James, 48 A.D.3d 698, 852 N.Y.S.2d 332; People v. Seavy, 16 A.D.3d 1130, 791 N.Y.S.2d 249; People v. Greene, 306 A.D.2d 639, 642, 760 N.Y.S.2d 769, Iv. denied 100 N.Y.2d 594, 766 N.Y.S.2d 170, 798 N.E.2d 354), Defendant failed to preserve for our *1372 review his further contention that the testimony of the officer improperly bolstered the testimony of the witness who identified defendant (see People v. Mattis, 46 A.D.3d 929, 931, 846 N.Y.S.2d 757; People v. Gousse, 43 A.D.3d 958, 841 N.Y.S.2d 383). In any event, any error in the admission of that testimony is harmless (see generally People v. Grant, 7 N.Y.3d 421, 424, 823 N.Y.S.2d 757, 857 N.E.2d 52; People v. Crimmins, 36 N.Y.2d 230, 241-242, 367 N.Y.S.2d 213, 326 N.E.2d 787). We further conclude that, although defendant is correct that the People violated a ruling of the court by eliciting testimony from the witness and the officer that the witness had identified defendant in a photographic array, the violation of that ruling also is harmless error (see generally Grant, 7 N.Y.3d at 424, 823 N.Y.S.2d 757, 857 N.E.2d 52). We reject defendant's contention that the court erred in instructing the jury with respect to the elements of intentional felony murder under Penal Law § 125.27 (1)(a)(vii). The court's instructions tracked the language contained in the Pattern Criminal Jury Instructions, and we conclude that the court "fairly instructed the jury on the correct principles of law to be applied to the case" (People v. Ladd, 89 N.Y.2d 893, 896, 653 N.Y.S.2d 259, 675 N.E.2d

1211).

[7] We reject defendant's further contention that Penal Law § 125.27(1)(a)(vii) is unconstitutionally underinelusive because ecrtain predicate felonies enumerated in Penal Law § 125.25(3), felony murder in the second degree, are not ineluded as predicate felonies for intentional felony murder in the first degree. The Court of Appeals has explained that one of the goals of the Legislature in enacting section 125.27(1)(a)(vii) was to limit the predicate felonies for intentional felony murder to "those that are potentially the most violent and involve a substantial risk of physical injury" (People v. Harris, 98 N.Y.2d 452, 476, 749 N.Y.S.2d 766, 779 N.E.2d 705). We note that the predicate felonies contained in section 125.25(3), identified by defendant as having been irrationally omitted from section 125.27(1)(a)(vii), are offenses that have less potential for violence **797 and physical injury than those included therein. We therefore conclude that the decision of the Legislature to exclude certain predicate felonies is rational and thus that Penal Law § 125.27(1)(a)(vii) is not unconstitutionally underinclusive (see generally Harris, 98 N.Y.2d at 477, 749 N.Y.S.2d 766, 779 N.E.2d 705).

Finally, we note that the certificate of conviction contains clerical errors, i.e., it omits the sentence imposed for the first count of murder in the first degree, it incorrectly reflects that defendant was convicted of murder in the first degree pursuant to Penal Law § 125.27-1G rather than section 125.27(1)(a)(vii), and it incorrectly reflects that defendant was sentenced to an indeterminate sentence of 25 years to life for each of the two *1373 rape counts, rather than a determinate sentence of 25 years. The certificate of conviction must therefore be amended to correct those clerical errors (see generally People v. Saxton, 32 A.D.3d 1286, 821 N.Y.S.2d 353).

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

51 A.D.3d 1369, 856 N.Y.S.2d 793, 2008 N.Y. Slip Op. 04158 (Cite as: 51 A.D.3d 1369, 856 N.Y.S.2d 793)

N.Y.A.D. 4 Dept.,2008. People v. Owens 51 A.D.3d 1369, 856 N.Y.S.2d 793, 2008 N.Y. Slip Op. 04158

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894 N.E.2d 662 11 N.Y.3d 740, 894 N.E.2d 662, 864 N.Y.S.2d 398 (Table) (Cite as: 11 N.Y.3d 740)

Page 1

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(The decision of the Court of Appeals of New York is referenced in the North Eastern Reporter and New York Supplement in a table entitled "Applications for Leave to Appeal - Criminal.")

Court of Appeals of New York
People
v.

John Owens August 07, 2008

4th Dept.: 51 A.D.3d 1369, 856 N.Y.S.2d 793 (Monroe)

Graffeo, J. Denied.

N.Y. 2008. People v. Owens 11 N.Y.3d 740, 894 N.E.2d 662, 864 N.Y.S.2d 398 (Table)

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1361

Responses of Wilma A. Lewis Nominee to be Judge for the District of the Virgin Islands to the Written Questions of Senator Chuck Grassley

- According to media reports citing Justice Department officials in 2000, you
 disagreed with then-Attorney General Janet Reno about the application of the death
 penalty to Carl Cooper, a man convicted under federal law of murdering three
 Starbucks employees here in Washington, D.C. You believed the death penalty was
 inappropriate because it had been rejected by D.C. voters, and because it would be
 unfair to apply it against a black man for the murder of two white victims and one
 black victim.
 - a. As I understand it, the Virgin Islands does not have a death penalty statute, however federal death penalty statutes still apply. If confirmed, will you apply the death penalty in appropriate cases?

Response: If confirmed, I will apply the death penalty in appropriate cases.

While it is true that, during my tenure as United States Attorney for the District of Columbia, my recommendation to then Attorney General Janet Reno against seeking the death penalty in *United States v. Carl Cooper* was not accepted by the Attorney General, neither the issue of race nor the anti-death penalty sentiments of District of Columbia voters played any role in forming the basis for my recommendation. Rather, the recommendation in *Cooper* was based on a full review of the relevant facts and case law, as presented by both the prosecution and defense counsel, including an analysis of applicable aggravating and mitigating factors. The fact that I had no reservations about recommending the death penalty for a black defendant, and contrary to the anti-death penalty sentiments of the local populace, is evidenced by my submission of such a recommendation to the Attorney General in another federal death-eligible matter that followed in relatively close proximity to the *Cooper* case. As previously noted, if I am confirmed as a federal district judge, I will apply the death penalty in appropriate cases.

b. Do you believe the defendant's race should be a factor when deciding whether or not to impose the death penalty in a first degree murder case?

Response: I do not believe, nor have I ever believed, that the defendant's race should be a factor in deciding whether or not to impose the death penalty in a death-eligible first degree murder case. Please also see my response to Question No. 1(a).

2. During your tenure as a United States Attorney for the District of Columbia, you expanded the "Operation Ceasefire" program to prosecute both violent and non-violent criminals in possession of handguns. Considering the Supreme Court's

recent decisions in D.C. v. Heller and McDonald v. Chicago, do you believe this program would be constitutional today?

Response: During my tenure as United States Attorney for the District of Columbia, the Office prosecuted individuals in possession of firearms in accordance with applicable laws. A careful analysis of the Supreme Court precedent in Heller and McDonald and the particular law in question would be required to determine whether the prosecution of violent and non-violent criminals in possession of handguns would be constitutional today. In both Heller and McDonald, the Supreme Court noted that the right to keep and bear arms guaranteed by the Second Amendment is not without its limitations. In that regard, the Court cited certain prohibitions or restrictions on the possession of firearms that would be unaffected by the Court's ruling, including, for example, the possession of firearms by felons and the carrying of firearms in sensitive places such as schools and government buildings. In addition, the Supreme Court did not address the full scope of the Second Amendment right. If confirmed as a judge for the District of the Virgin Islands and presented with an issue regarding the constitutionality of a law prohibiting or restricting the possession of firearms, I will closely examine and follow the decision and reasoning in Heller, McDonald, and any other applicable Supreme Court and Third Circuit precedent in addressing the scope of the individual Second Amendment right.

- 3. In a speech to the 2001 Virgin Islands Judicial Conference, you criticized the Supreme Court's decision in *Bush v. Gore* and then said, "Courage is one of the qualities needed in all judges including the courage to be a servant of the law and to pursue the cause of justice even when you stand alone."
 - a. Would you please explain to me what you meant by this statement?

Response: The theme for the 2001 Virgin Islands Judicial Conference was "Continuing the Quest for Excellence: Public Trust and Confidence in the Courts." I used a widely quoted passage from Justice Stevens' dissent in the thenrecent case of *Bush v. Gore* as an introduction to my remarks because of Justice Stevens' focus on the importance of public confidence in those who administer the judicial system as fundamental to the rule of law. As I noted, "[r]egardless of which side of the controversy one happens to be aligned," one could not help but be struck by Justice Stevens' strongly worded dissent that went to the core of our judicial system.

Later in my remarks and completely separate from the *Bush v. Gore* introduction, I discussed the importance of an independent judiciary, impartiality and integrity in fostering public trust and confidence in the courts. I made the statement referenced in this question in the following context:

The challenging climate in which judges operate also includes the precarious position in which elected judges must find themselves, subject as they are to the pressures, demands and necessities of election politics. ... Election politics would seem to fly in the face of the expectation that judges should decide the legal issues before them – in the words of the 19th century jurist Judge William Cranch – "undisturbed by the clamor of the multitude." The pressures, tensions and undue influences which sometimes infect the judicial environment threaten the independence and integrity of the judiciary and threaten to undermine the rule of law. Former Chief Judge of the District of Columbia Circuit Abner Mikva once noted that the quality most needed in federal judges is courage. Isuggest that courage is one of the qualities most needed in all judges – including the courage to be a servant of the law and to pursue the cause of justice even when you stand alone.

(underlining supplied). The statement in question was intended to emphasize the importance to the integrity of the judicial process of judges who administer justice impartially and with a firm commitment to the rule of law, notwithstanding the clamor of the crowds, or public pressure, influence or sentiment.

b. How does your view compare to Alexander Hamilton's view, espoused in Federalist No. 78, that "it is indispensable that [the courts] should be bound down by strict rules and precedents"?

Response: The view expressed in my remarks is entirely consistent with the quoted excerpt from Federalist No. 78 to the extent that they both speak to a firm commitment to the rule of law.

4. The Khobar Towers Case was transferred from the U.S. Attorney's Office for the District of Columbia, which you headed at the time, because of the slow pace of the probe. You criticized the move and characterized then-FBI director Louis Freeh's initiative to transfer the case as "ill-conceived and ill-considered." Time magazine noted your comments "were not exactly the norm for a federal official." Do you believe your reaction demonstrated the appropriate judicial temperament required to sit as a federal district court judge?

Response: During the course of my almost 30-year professional career, the referenced incident represents the only occasion, of which I can recall, when I spoke out publicly and aggressively on an internal matter of concern. As I noted at the time: "[i]t is not my practice to respond to press inquiries on matters of this nature. However, the integrity and reputation of the United States Attorney's Office and the prosecutors, who have worked diligently and capably for years on this sensitive and significant investigation, demand that I do."

I do not agree with any contention or suggestion that the reassignment of the Khobar Towers matter was due to any problem with the manner in which the United States Attorney's Office, in conjunction with the Department of Justice, had handled the matter. I also do not believe that the decision to reassign the case – which was made without any

substantive input regarding the facts and circumstances of the investigation from the U.S. Attorney's Office and Department of Justice prosecutors assigned to the matter – was the product of either informed deliberations or an objective review. Nonetheless, if I were faced with the same situation today – with ten years of additional seasoning – I would resort to my characteristically less public and more measured demeanor, an appropriate temperament that, if confirmed, I would bring to the federal bench.

5. Do you believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress that it deems unconstitutional? If so, under what circumstances, and applying what factors?

Response: Yes. I believe it is appropriate for a judge to strike down an act of Congress when Congress has exceeded its authority under the Constitution or enacted a statute that is in conflict with the Constitution. Any such ruling should be guided by and follow the governing precedent established by the Supreme Court and the applicable United States Court of Appeals.

6. What is the most important attribute of a judge, and do you possess it?

Response: I believe that the most important attribute of a judge is the ability to be a fair and impartial adjudicator, with a strong commitment to the rule of law and its equal application to all parties. I believe that I possess this attribute.

7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: I believe that a judge should have the kind of temperament that promotes confidence in, credibility, and respect for the judicial process and system. In this regard, the judge should: (1) preside over matters in a manner that is even-handed, fair and impartial, and exhibits respect for the rule of law and the right of parties to be heard; (2) be professional, dignified and respectful in his or her dealings with all who enter the courtroom, including the judge's staff, court staff, lawyers, litigants, witnesses, jurors, and the general public; and (3) be firm in maintaining the kind of order and decorum in the courtroom and fostering the kind of practices before the court that are in accordance with the high ethical and other standards that are critical to the integrity of the judicial process. I believe that I meet this standard.

8. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

9. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: If confirmed as a judge for the District of the Virgin Islands and faced with a case for which there is no dispositive controlling precedent from the United States Supreme Court or the United States Court of Appeals for the Third Circuit, I would review Supreme Court and Third Circuit cases for any analogous matters that might provide relevant guidance. I would also look to opinions from other circuits. In the absence of any persuasive authority, I would examine carefully the text of the statutory or other legal provision and construe it in accordance with the plain and ordinary meaning of the language. In the event of ambiguity, I would seek to discern legislative intent. I would be guided by the principles that my responsibility as a judge is to interpret and apply the law, not to make the law, and that I should address the matter as narrowly as possible.

10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: If confirmed as a judge for the District of the Virgin Islands, I would be bound by, and follow faithfully, the legal precedent established by the United States Supreme Court and the United States Court of Appeals for the Third Circuit. Accordingly, even if I believed that the Supreme Court or the Court of Appeals had seriously erred in rendering a decision, I would apply that decision.

11. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: Recognizing the great value that comes from experience, I would, if confirmed, first consult with, and seek guidance from, more seasoned judges regarding their caseload management practices with an eye toward obtaining information regarding successful approaches to case management that would be helpful in managing my own docket. I also expect that, in managing my caseload, I would set and enforce reasonable, but firm deadlines; schedule and conduct status conferences designed to promote continuous forward progress toward the ultimate resolution of each case; and work diligently to resolve pending motions in a timely manner. I would also seek to effectively incorporate the Magistrate Judge into the work of the court, and encourage the use of alternative dispute resolution procedures.

12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

1366

Response: Yes, I believe that judges play a key role in controlling the pace and conduct of litigation. If confirmed, I would take the steps set forth in response to Question No. 11 to control my docket.

13. Please describe with particularity the process by which these questions were answered.

Response: I received the questions from the Department of Justice on May 31, 2011. I prepared responses and reviewed them with a representative of the Department of Justice. After finalizing the responses, I authorized their transmittal to the Senate Judiciary Committee.

14. Do these answers reflect your true and personal views?

Response: Yes.

1367

Responses of Wilma A. Lewis Nominee to be Judge for the District of the Virgin Islands to the Written Questions of Senator Tom Coburn, M.D.

1. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: I do not agree with the proposition that the Constitution is constantly evolving as society interprets it. The Constitution can be altered only through the amendment process.

2. Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?

Response: No.

3. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?

Response: No. The text of the Constitution governs and district judges are bound by that text, as interpreted by the Supreme Court and the applicable Circuit Court.

4. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?

Response: In *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court ruled that Congress had broad, but not unlimited powers under the Commerce Clause. If confirmed as a judge for the District of the Virgin Islands, I would apply those precedents as well as any other applicable precedents from the Supreme Court and the Court of Appeals for the Third Circuit in addressing the reach of Congress' power under the Commerce Clause.

5. The U.S. Supreme Court held in District of Columbia v. Heller, 554 U.S. 570 (2008), that the Second Amendment of the United States Constitution "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." As Justice Scalia's opinion in Heller pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Leaving aside the McDonald v. Chicago decision, do you personally believe the right to bear arms is a fundamental right?

Response: I have not analyzed this area of constitutional law so as to form a personal view or belief regarding the issue of fundamental rights. Nor would any personal view or belief interfere with my ability and commitment, if confirmed, to faithfully follow governing precedent. In *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010), the Supreme Court ruled that an individual's right under the Second Amendment to keep and bear arms is enforceable against the States through the Fourteenth Amendment. In so ruling, the Supreme Court concluded that this Second Amendment right is a fundamental right. If confirmed as a judge for the District of the Virgin Islands, I will follow this and any other related Supreme Court precedent, as well as any applicable precedent of the United States Court of Appeals for the Third Circuit.

a. Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.

Response: I have not analyzed this area of constitutional law so as to form a personal view or belief as to whether explicitly guaranteed substantive rights are also fundamental rights. Nor would any personal view or belief interfere with my ability and commitment, if confirmed, to faithfully follow governing precedent. If confirmed as a judge for the District of the Virgin Islands, I will follow applicable Supreme Court and Third Circuit precedent.

b. Is it your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.

Response: I have not analyzed this area of constitutional law so as to be fully conversant with the entire body of Supreme Court precedent. However, in *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3036 (2010), the Supreme Court ruled that the Second Amendment right to keep and bear arms is enforceable against the States through the Fourtcenth Amendment, and in so doing analyzed whether the right was "fundamental" to our Nation's "scheme of ordered liberty" or "deeply rooted in this Nation's history and tradition."

c. The Heller Court further stated that "it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right." Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.

Response: I have not analyzed this area of constitutional law so as to form a personal view or belief as to whether the First, Second and Fourth Amendments codified pre-existing rights. Nor would any personal view or belief interfere with my ability and commitment, if confirmed, to faithfully follow governing precedent. If confirmed as a judge for the District of the Virgin Islands, I will follow the *Heller* decision and any other applicable Supreme Court and Third Circuit precedent.

6. Some have criticized the Supreme Court's decision in Heller saying it "discovered a constitutional right to own guns that the Court had not previously noticed in 220 years." Do you believe that Heller "discovered" a new right, or merely applied a fair reading of the plain text of the Second Amendment?

Response: The decision in *Heller* was based on the Supreme Court's reading of the text of the Second Amendment.

a. Similarly, during his State of the Union address, the President said the Supreme Court's decision in Citizens United v. FEC, 558 U.S. ____ (2010), "reversed a century of law" and others have stated that it abandoned "100 years of precedent." Do you agree that the Court reversed a century of law or 100 years of precedent in the Citizens United decision? Please explain why or why not.

Response: I have not analyzed this area of law so as to form a personal view on this subject. Nor would any personal view interfere with my ability and commitment, if confirmed, to faithfully follow governing precedent. If confirmed as a judge for the District of the Virgin Islands, I will follow the Supreme Court's decision in Citizens United v. FEC.

7. What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?

Response: In both *Heller* and *McDonald*, the Supreme Court noted that the right to keep and bear arms guaranteed by the Second Amendment is not without its limitations. In that regard, the Court cited certain prohibitions or restrictions regarding firearms that would be unaffected by the Court's ruling, such as the possession of firearms by felons and the mentally ill, the carrying of firearms in sensitive places, and the placing of conditions on the commercial sale of firearms. However, the Court did not address the full scope of the Second Amendment, including all of the limitations to the individual right to keep and bear arms. If confirmed as a judge for the District of the Virgin Islands, I will closely examine and follow the decision and reasoning in *Heller*, *McDonald*, and any other applicable Supreme Court and Third Circuit precedent in addressing issues related to the scope of the individual Second Amendment right.

8. Is the Second Amendment limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?

Response: The Supreme Court in *Heller* and *McDonald* did not address the full scope of the individual right to keep and bear arms under the Second Amendment. If confirmed as a judge for the District of the Virgin Islands, I will closely examine and follow the decision and reasoning in *Heller*, *McDonald*, and any other applicable Supreme Court and Third Circuit precedent in addressing issues related to the scope of the individual Second Amendment right.

9. In Roper v. Simmons, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?

Response: If confirmed as a judge for the District of the Virgin Islands, I would be bound to follow governing precedent. I would therefore follow the Supreme Court's decision and reasoning in *Roper v. Simmons* and any other applicable Supreme Court and Third Circuit precedent.

a. Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"

Response: If confirmed as a judge for the District of the Virgin Islands, I would be bound to follow governing precedent. In determining what constitutes crucl and unusual punishment under the Eighth Amendment, I would therefore follow Supreme Court precedent on this issue, including *Roper v. Simmons*, as well as any applicable Third Circuit precedent.

b. How would you determine what the evolving standards of decency are?

Response: If confirmed as a judge for the District of the Virgin Islands, I would follow the analytical approach adopted by the governing precedent in the Supreme Court and the Third Circuit.

c. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: I do not believe that a judge could find that the death penalty is unconstitutional in all cases in view of the Supreme Court precedent establishing that the death penalty is constitutional, except in certain discrete circumstances.

d. What factors do you believe would be relevant to the judge's analysis?

Response: I do not believe that any such analysis would be appropriate or warranted in view of the Supreme Court precedent establishing that the death penalty is constitutional, except in certain discrete circumstances.

e. When determining what the "evolving standards of decency" are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, ¹ in addition to foreign law, and in other cases have looked solely to the laws and traditions

¹ Roper v. Simmons, 543 U.S. 551, 564-65.

of foreign countries.² Do you believe either standard has merit when interpreting the text of the Constitution?

Response: If confirmed as a judge for the District of the Virgin Islands, the standards that would have merit for purposes of my decision making would be those standards sanctioned by Supreme Court precedent.

If so, do you believe one standard more meritorious than the other?
 Please explain why or why not.

Response: Please see my response to Question No. 9(e).

10. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?

Response: I do not believe it is proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution unless Supreme Court precedent so dictates.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: I do not believe it is appropriate for judges to look to foreign countries for wise solutions or good ideas to legal and constitutional problems unless Supreme Court precedent so dictates.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: If confirmed as a judge for the District of the Virgin Islands, I would not consider foreign law when interpreting the Constitution unless Supreme Court precedent so dictates.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: Regardless of whether foreign sources might be of assistance in discrete instances, I do not believe it is appropriate for judges to look to foreign sources to interpret our laws unless Supreme Court precedent so dictates.

d. Would you consider foreign law when interpreting the Eighth Amendment?
Other amendments?

Response: If confirmed as a judge for the District of the Virgin Islands, I would not consider foreign law when interpreting the Eighth Amendment or any other amendments unless Supreme Court precedent so dictates.

² Graham v. Florida, 130 S.Ct. 2011, 2033-34.

Responses of Marina Garcia Marmolejo Nominee to be United States District Judge for the Southern District of Texas to the Written Questions of Senator Chuck Grassley

1. In your Questionnaire, you indicated that most of your experience falls within criminal law. Would you please explain your civil law experience and how it has prepared you to sit as a federal district court judge, if confirmed?

Response: I have gained extensive experience in civil and commercial litigation during my tenure as an attorney in private practice since 2007. I represented individuals and companies involved in a variety of civil disputes and have worked closely with partners who devote their entire practice to civil litigation. I have a firm grasp of the rules of civil procedure and the practicalities faced by litigants in civil disputes. Though less than 5% of the docket in the Laredo Division is civil litigation, I feel confident that my experience has prepared me to effectively preside over these types of cases. I believe that my overall experience as a federal prosecutor, federal defender, and private practitioner has prepared me to preside over the civil and criminal dockets should I be fortunate enough to be confirmed.

2. Do you believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress that it deems unconstitutional? If so, under what circumstances, and applying what factors?

Response: Yes. Judicial review makes it proper for a judge, consistent with governing precedent, to hold that an act of Congress is unconstitutional when Congress has exceeded its authority under the Constitution. Before holding a statute unconstitutional, however, I would carefully review and apply Supreme Court precedent to ensure that I am correctly applying all necessary guiding principles.

3. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is the ability to objectively apply the law to the facts of each case. I believe I possess this attribute.

4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should lend a listening ear and should keep an open mind to the arguments being presented. A judge should never prejudge any case. A judge should treat all litigants and counsel with respect and dignity. If I am fortunate enough to be confirmed, I will remain true to these convictions.

5. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

6. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In considering a case of first impression, I would begin by reviewing the prior rulings of the Fifth Circuit and the Supreme Court to determine if there is an analogous situation. In matters concerning statutory interpretation, I would examine the plain language of the statute. If the language of the statute is ambiguous, I would consider legislative history and intent if available and appropriate. I would also look to analogous precedent from other Circuit and District Courts.

7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: The role of a district judge is to faithfully apply the law. If confirmed, I would follow precedent regardless of any personal beliefs.

8. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would set reasonable, but firm scheduling deadlines. I would work closely with my staff to make certain that items ripe for dispositive resolution are handled expeditiously. I would work diligently to resolve pending motions on a timely basis.

9. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I believe judges have a role in controlling the pace and conduct of litigation by scheduling regular hearings, setting and enforcing deadlines, and carefully monitoring the progress of cases. If confirmed, I intend to work closely with my staff and avail myself of the assistance of Magistrate Judges when appropriate.

Please describe with particularity the process by which these questions were answered. Response: I received the questions on May 31, 2011. I prepared responses the next day. I then reviewed my responses with representatives of the Department of Justice, after which I finalized my responses. I then authorized their transmittal to the Committee.

11. Do these answers reflect your true and personal views?

Response: Yes.

Senator Chuck Grassley Questions for the Record Major General Marilyn A. Quagliotti Deputy Director for Supply Reduction, Office of National Drug Control Policy

1. What do you believe is the role of the Deputy Director of Supply Reduction within the Office of National Drug Control Policy (ONDCP)?

ANSWER: The Office of Supply Reduction oversees activities to reduce the availability, production, distribution and use of illicit drugs in the United States and abroad. Those activities include developing, coordinating and implementing supply reduction policies, and coordinating international interdiction, law enforcement, and intelligence. ONDCP is committed to a balanced strategic approach to drug control by combining the impact of both supply and demand reduction activities into an integrated whole.

2. What kind of leadership will you provide in Supply Reduction at ONDCP?

ANSWER: I will provide a fresh perspective to the Supply Reduction office. However, ONDCP has a team of professionals with a vast amount of experience and if confirmed I will seek their views and expertise when making policy decisions. I will not hesitate to ask tough questions and make changes where necessary.

3. What qualifications do you have to effectively lead Supply Reduction?

ANSWER: As a military officer, I was a Commander five times and a Deputy Commander or Vice Director twice. A commander is responsible for everything their organization does or fails to do. My first command as a lieutenant in South Korea was a company of 70 people that was responsible for approximately \$5 million dollars in assets and a budget of approximately \$1 million dollars. The last unit I commanded spanned across Europe (U.K., Luxemburg, Belgium, the Netherlands, Germany, Italy, Switzerland, Kosovo and Bosnia), and I was responsible for 10,000 soldiers, international government civilians and contractors. I also managed a budget of 300 million dollars. In this position, I not only interacted with my European Military counterparts but also with local law enforcement professionals and elected officials regarding their government policies affecting the US military and their families. My final assignment as Vice Director of the Defense Information Systems Agency was as the Deputy for an organization with a global mission, responsible for 16,000 people including military, government civilians and contractors, and I managed a budget of 6.8 billion dollars.

4. What do you see as the biggest challenge for the new Deputy Director of Supply Reduction?

ANSWER: The biggest challenge I will face, if confirmed as the new Deputy Director of Supply Reduction will be to accurately diagnose the nature of the international drug threat and how it affects the United States. I will need to identify the strengths and weaknesses in

our strategy and ensure that we are effectively using both our coordinating and budgetary authority in setting policy priorities.

5. What do you see as your most significant accomplishment?

ANSWER: My most significant accomplishment occurred upon my retirement. I left behind a cadre of officers and senior Non Commissioned Officers that I helped to develop for the future. Their professionalism and continued desire to serve is my most significant accomplishment.

6. If confirmed, what is your plan for Supply Reduction to reduce the demand for narcotics in the United States?

ANSWER: If confirmed, I will work to implement the *National Drug Control Strategy*, which provides for a comprehensive, balanced and integrated approach to the drug threat. Reducing the demand for drugs in the United States is the result of effective programs combining prevention, treatment and recovery support, and reduced availability and access to drugs.

Congress established the Office of National Drug Control Policy to oversee our federal
anti-drug efforts and to guarantee coordination and cooperation between other agencies
with a stake in our counternarcotics programs.

What recommendations would you make to ensure better coordination and cooperation among the counternarcotics programs administered between the State Department, the DOD, the DEA, Homeland Security, and USAID?

ANSWER: To ensure better coordination and cooperation among the counternarcotics programs among our Federal partners is to provide clear, cogent, and comprehensive strategy in policy decisions, with distinct guidance on necessary steps, responsibilities, and priorities for the implementation of that strategy. ONDCP must also implement its budgetary authorities in a manner that ensures the realization of that strategic vision.

8. You have a long, distinguished career as a military officer. However, your direct experience with drug supply reduction is unclear. Would you please explain what direct experience you will bring to this position, if confirmed?

ANSWER: I have spent 9 years overseas working with other countries on many issues. I spent two years in Panama (1995-1997) where my unit deployed over 50 times into Central and South America. We supported medical readiness exercises, school and road building projects, and well digging projects. We also participated in peacekeeping/disaster relief exercises with our military counterparts and often involved members of our State Department as well as foreign government participants. At the time we were there, many of these countries had ongoing insurgencies. I am familiar and understand the difficult challenges that countries face in developing their own strategies to fight drug production

and trafficking. I was also responsible for developing the command and control architecture to support Joint Task Force Bravo in Honduras which played a direct role in interdiction efforts, at that time. In addition, I spent time with the Colombian Army as an advisor to assist them in developing a more effective command and control structure for conducting their operations. From this experience, I gained valuable insights into the challenges faced by countries under threat of drug trafficking organizations. In addition, I was personally responsible for executing drug testing programs in all 5 of my military commands and maintaining a drug free work environment. Along with this responsibility, I was responsible for either recommending treatment for soldiers with drug addiction problems or the application of non-judicial punishment under the Uniform Code of Military Justice. Later, as the civilian workforce entered the drug testing program I was responsible for the successful implementation of that program.

9. What performance measures do you consider most important for measuring the success and failure of interdiction and eradication programs in the international arena?

ANSWER: The most direct and obvious measures of success are the metrics of drug production in countries subject to eradication and interdiction pressure. An example would be Colombia, where eradication pressure and interdiction, sustained over time and carried out in the context of alternative economic development, citizen security, and robust government presence, yielded reductions in the production and movement of both cocaine and heroin. It is also important to look at the weakening or defeat of criminal or terrorist organizations that control and benefit from drug production and distribution, and measures showing the economic and political stability and viability of democratic governments that can prosper once the drug threat is diminished. Eradication and interdiction are necessary tools in the total package of counter-drug efforts, and their success can be seen along the entire spectrum of strategic goals for U.S. policy regarding partner nations.

- 10. You are associated with the Durango Group. There has been criticism of the firm, raising conflict of interest concerns. As I understand it, Durango associates are often on the military's payroll as mentors while also consulting with defense contractors.
 - a. What is your status with the Durango Group?
 - b. Have you personally acted in a capacity as I describe being a paid military mentor while serving as a paid consultant to a defense contractor? Do you see any problem with this arrangement that permits Durango associates to draw income from multiple sources?
- c. Has the Durango Group had any association with the ONDCP?
 ANSWER:

- a. I am listed as an associate for Durango Group but currently do not have any clients. Upon confirmation, I will dissolve my agreement with Durango Group.
- b. I have never been a paid military mentor. I think each individual must follow the advice of their own government assigned ethics counselor, regarding conflicts of interest.
- c. Not to my knowledge.
- 11. The United States has provided billions to Mexico through the Merida Initiative for equipment, training, and technical assistance to help address cross-border drug trafficking, violence and organized crime. However, the violence has continued to escalate along the Southwest Border.
 - a. What additional steps would you recommend to address the violence along the Southwest Border being promulgated by drug trafficking organizations?

ANSWER: If confirmed, I would recommend additional emphasis on reducing weapons and revenue flow to drug trafficking organizations (DTOs); helping to reform and strengthen judicial and prosecutorial institutions in Mexico; promoting more effective integration of military and law enforcement interaction in Mexico; developing greater intelligence sharing; developing more vetted and well-trained law enforcement and military forces in Mexico (including insistence on human rights standards); helping to counter institutional corruption; and reducing drug demand in the United States to curtail revenue and incentives for drug traffickers.

b. ONDCP is one of the primary coordinators of the new Southwest Border Counternarcotics Strategy currently being developed. What are your goals for the Merida Initiative and how will you work with the other agencies to improve coordination of our limited resources?

ANSWER: If confirmed, one of my long term goals for the Merida Initiative is a more peaceful and stable Mexico, free from the excessive corruptive influence of transnational drug trafficking organizations, and the successful transition of a national security threat to a law enforcement problem. I will also use the ONDCP chairmanship of the Southwest Border Counternarcotics Strategy Executive Steering Group to oversee implementation of the Strategy across 20 different drug control agencies. Through this venue, I hope to ensure a congruent and complementary balance between the Southwest Border strategy and the Merida Initiative action items. In addition, if confirmed, I will work to link the numerous strategies (Northern Border Counternarcotics Strategy, Southwest Border Counternarcotics Strategy) and the several State Department initiatives (Merida Initiative, Central American Regional Security Initiative and Caribbean Basin Security Initiative)

together by using the National Drug Control Strategy as the overarching umbrella document.

- 12. The situation in Colombia has improved dramatically since Plan Colombia was first proposed. However significant amounts of coca are still being grown and narco-terrorist groups, such as the FARC, continue to use the proceeds to cause violence and instability. I am also concerned that other countries in the Andean Region are complicit in narcotics trafficking in the region by limiting their counternarcotics programs and providing safe havens to narcos.
 - a. The president of Bolivia, Evo Morales, has always supported increased production of what he considers "licit" coca while significantly reducing eradication efforts. What recommendations would you give to address the increase in coca cultivation in Bolivia?

ANSWER: Coca cultivation has remained somewhat static in Bolivia over the last three years; however, the potential production of cocaine in Bolivia has increased substantially due to technology transfer from Colombian producers. But the threat of greater expansion is real. Clearly, the Bolivian government has suffered from its decision to dismiss major U.S. counternarcotics effort in that country through expulsion of the US Ambassador and the DEA contingent. Bolivian cocaine is rarely directed towards the United States, and instead is routed to markets in the South American region and in Europe. We need to involve South American partners (such as Brazil, Chile, and Argentina) in more effective counterdrug controls on Bolivian production, just as we need more serious contributions from our European partners in exerting pressure on the government of Bolivia to contain and defeat cocaine production.

b. It is reported that half of the cocaine produced in Colombia each year is transited through Venezucla. The Chavez Government does very little to halt cocaine movement and has significantly reduced the number of DEA agents allowed into the country. What steps would you take to address the drug trafficking and narcoterrorism problems in Venezucla?

ANSWER: Though the Venezuelan situation is complicated and presents us with few tools to affect their behavior, the seriousness of the cocaine penetration of the government of Venezuela is inescapable. If I am confirmed, I will investigate the issue you have raised and collaboratively determine the best course of action and work to implement that course of action

13. As the pressure on Drug Trafficking Organizations has increased in Mexico, they have shifted transiting routes farther south into Central America. I am also concerned about the threat of further shifts to Caribbean and elsewhere in the Transit Zone.

In confirmed, what steps would you take to ensure that adequate air and marine assets are available for drug interdiction activities in the Transit Zone?

ANSWER: It is my understanding that ONDCP is conducting assessments of the optimum lay-down of interdiction forces and assets in this region in order to provide strategic guidance for budgetary and policy development in the Transit Zone. ONDCP has also developed an ambitious goal for interdiction rates in the Transit Zone, building the capacity to arrive at a 40 percent interdiction rate. If confirmed, I will continue this effort.

- 14. Terrorists use the billions of dollars generated by the drug production in Afghanistan to fund terrorist activities and to destabilize the Afghan society and government. A main tenant of President Obama's Counternarcotics Strategy for Afghanistan is to end eradication efforts and focus on interdiction and alternative development. I agree that interdiction and alternative development are vital, but enforcement and punishment must also play an important role.
 - a. What do you see as ONDCP's role in helping to reduce the proliferation of drugs in Afghanistan?

ANSWER: If confirmed, I will coordinate all efforts with the Department of State, Department of Defense and the Department of Justice to reduce the proliferation of drugs from Afghanistan. This will include all aspects of Afghanistan counterdrug policy—interdiction, alternative development, and institutional reform especially in the judicial sector. In addition, if confirmed, I will facilitate international engagement in the U.S. efforts to stem the flow of Afghan drugs, and specifically leverage Director Kerlikowske's important relationship with his Russian counterpart, Victor Ivanov, in their roles as cochairs of the US-Russia Bi-National Presidential Commission Drug Trafficking Workgroup.

b. What are your goals for the counternarcotics program in Afghanistan and how will you work with the other agencies to improve coordination of our limited resources?

ANSWER: ONDCP's primary goal is to ensure that the counterdrug mission remains integrated with our overall economic development and military security operations in Afghanistan. Further, ONDCP must coordinate efforts with the new Senior Representative for Afghanistan-Pakistan, Ambassador Marc Grossman, and work with his team in reassessing options and priorities. If confirmed, I would work to ensure stronger efforts are made to develop a more comprehensive financial attack plan and to make arrest, prosecution, and potential extradition of drug traffickers a more effective feature of our plan.

- 15. A rapidly emerging drug trend among youth is the use of synthetic stimulants. These drugs are often disguised as legitimate products and are sold in increasing numbers at local shopping malls and online. However this growing use is leading to serious and deadly consequences, including the death of an 18 year old recent high school graduate in Indianola, Iowa.
 - a. If confirmed, will you work to combat this growing trend?

ANSWER: Yes, I believe this is an emerging issue of concern - with international implications - and if confirmed I will work with Director Kerlikowske to combat this trend.

b. What actions do you believe you could take to halt the spread of this abuse?

ANSWER: The actions taken to stop the abuse must be comprehensive in nature. Prevention and treatment is essential. Drug free coalitions are well-placed to work toward attracting local and community attention to this issue and implementing successful environmental regulations. I understand the Office of Supply Reduction is working with the DEA on drug scheduling issues so that the enforcement community has the tools they need to prosecute manufacturers and sellers. If confirmed, I will continue this effort. I will also work with relevant international bodies to make it harder to obtain the chemicals necessary to produce these drugs.

16. The fastest growing drug abuse trend is the abuse of prescription and over-the-counter drugs. According to the most recent National Survey of Drug Use and Health, nearly 7 million people have admitted to using controlled substances without a doctor's prescription. If confirmed, what actions will you take to fight this epidemic?

ANSWER: Prescription drug abuse is the fastest growing drug problem in the United States and has been characterized as a public health epidemic by the Centers for Disease Control and Prevention. If confirmed, in my capacity as Deputy Director for Supply Reduction, my role will be to fully support the Administration's national prescription drug plan. Specifically, my office will support DEA efforts against illegal Internet providers of controlled substances, domestic and international, as well as operations they are mounting to constrain the supply of diverted controlled substance medication by focusing on wholesale distributors with anomalously large quantities provided well above medical need. In addition, I understand ONDCP coordinates with our international partners in forums such as the United Nations Office of Drugs and Crime Commission on Narcotic Drugs to maintain global controlled substance treaties and standards for opiate distribution, in conjunction with the World Health Organization. ONDCP also works with the International Narcotics Control Board of the UNODC to monitor pharmaceutical controlled substance global flow and the rising threat of counterfeit controlled substance production and distribution. If confirmed, I will utilize all of these platforms to aid in current efforts to fight this troubling new trend in drug abuse.

17. I often hear from state and local law enforcement that the Federal government is not the most helpful partner when it comes to sharing information. What is your plan for improving relations and information sharing between Federal, State, and local law enforcement entities in your capacity as Deputy Director of Supply Reduction, if confirmed?

ANSWER: I believe that constant consultation, communication and information sharing are essential in understanding the needs of state, local and tribal authorities. If confirmed,

I will work closely with the Deputy Director for State, Local and Tribal Affairs Ben Tucker to establish close relationships with law enforcement entities, especially those law enforcement personnel that play a key role in Mexican and Canadian partnerships located along the Southwest and Northern borders.

Written Questions of Senator Tom Coburn, M.D.

Major General Marilyn A. Quagliotti, USA (Ret.)

Nominee, to be Deputy Director for Supply Reduction, Office of National Drug Control Policy

U.S. Senate Committee on the Judiciary

May 31, 2011

 There is no question you have served our country with honor during your distinguished 32-year military career. However, you are nominated to the position of Deputy Director for Supply Reduction at the Office of National Drug Control Policy (ONDCP). That office oversees activities to reduce the availability, production, and distribution of illicit drugs in the United States and abroad. Those activities include developing, coordinating and implementing supply reduction policies, and coordinating domestic and international interdiction, law enforcement, and intelligence.

In reviewing your resume, I cannot find specific experience related to reducing drug availability and production, developing drug policy or coordinating with domestic and international law enforcement regarding drug supply reduction. Over the course of your career, have you ever been involved in developing U.S. drug policy?

- a. If so, how and in what capacity?
- b. Have you specifically worked with Congress in the development of drug policy, particularly related to drug supply reduction? If so, how and in what capacity?

ANSWER:

- a. I have not been involved in developing U.S. drug policy at the national level; however, throughout my career I have been responsible for the implementation of drug policy. I also think that the best policy decisions are made by people who have been on the ground and who rely on facts and science. I have also witnessed the effects of smart drug policies. As a lieutenant entering the Army just after Vietnam, I saw the toll that drug use took on our soldiers and our ability to operate a military unit. The introduction of drug testing policies in the military had a dramatic and positive effect on the quality of the force. As a platoon leader and company commander, I was personally responsible for executing these drug tests.
- b. I have worked with Congressional staffers on many issues related to the Defense Department while I worked at Defense Information Systems Agency. If confirmed, I look forward to working with Congressional staffers as well as members of Congress again in the development of U.S. Drug policy.
- 2. Mexico and Columbia are two major source countries in the illegal drug flow into the United States. Have you worked with either country on international policy development to curb this drug flow?

1

a. If so, what specific policies did you help to implement?

ANSWER: During my time in the Army, between 1995-1997, I advised the Colombian Army on how to be more effective during eradication efforts and while conducting operations against insurgent groups such as the FARC in the ungovernable regions of Colombia. Although this was not an international policy development effort, the time spent with the Colombian Army provided valuable insight regarding the difficult challenges faced by the Colombian Government in its struggles to regain control of much of its territory. Although Mexico is a very different situation, I believe the insight gained during my time with the Colombian Army can inform my approach to drug policy development with Mexico.

- 3. In 2007, the U.S. and Mexico formed a new cooperation and assistance program called the Merida Initiative, which is a package of counterdrug and anti-crime assistance to Mexico and Central America. While the authorization for funding has expired, do you believe this Initiative has been successful in reducing the supply of drugs entering the U.S. from Mexico and Central America? Why or why not?
 - a. What other effective policies do you believe should work in conjunction with or in place of the Merida Initiative, particularly related to drug supply reduction?

ANSWER: The Merida Initiative has been one of the most important developments we have seen in the history of the U.S./Mexico counterdrug partnership and it has had a demonstrable effect on reducing the flow of cocaine into the United States. Additional policy actions that complement our assistance to Mexico through the Merida Initiative include continuing to strengthen U.S. efforts to diminish the southbound flow of weapons and bulk cash associated with the drug trade.

b. Do you believe the Mexican government has increased its efforts to combat the drug cartels that supply drugs to the U.S. and/or reformed its law enforcement and judicial systems as it relates to drug-related crime?

ANSWER: I believe the Mexican government, since the election of President Calderon, has stepped up its efforts significantly against drug cartels. A decision has been made to courageously confront and defeat these forces, and this decision has led to a partnership between our nation that is frankly unprecedented yielding over 20 cartel senior leaders either killed or captured over the last year.

i. If so, how effective have those efforts been?

ANSWER: I believe progress has been made, and the commitment to reach our respective national goals has never been stronger.

c. In 2000, the U.S. increased its assistance to Columbia via Plan Columbia in order to counter the country's drug and security crisis. It was a six-year plan, but assistance has continued beyond 2006. Do you believe Plan Columbia had any effect on reducing the drug supply from Columbia to the U.S.? Why or why not?

ANSWER: Yes, Plan Colombia has been a major policy success. Not only has Colombia become a stronger, more safe, more prosperous, and more stable democracy during the time of Plan Colombia, with advances in the rule of law, government presence, and support for human rights, but one can see direct and positive impact on drug production. Between 2001 and today, reductions in the production of both cocaine and heroin in Colombia have dropped steeply, declining by approximately 60 percent and 80 percent, respectively. The positive impact of Plan Colombia has been felt on U.S. streets. In fact, the Colombia experience has become a model for other nations around the world that confront similar drug threats.

i. The Government Accountability Office (GAO) noted in a 2008 report that U.S. efforts to transfer program operations and funding responsibilities have had mixed results. What other effective policies do you believe should be implemented in addition to, or in place of Plan Columbia, particularly related to drug supply reduction?

ANSWER: Many lessons have been learned through Plan Colombia on how to be effective. Creating disincentives to drug cultivation through eradication coupled with the provision of security on the ground, and with efforts to provide alternative economic development opportunities for Colombians is useful. Additionally, providing stronger economic and judicial institutions have helped make the progress sustainable. Colombia can adopt a stronger role in guiding its own counter-drug and economic development strategies. Positive developments for the future should also include the benefits of a free-trade agreement with the United States, and a stronger regional partnership with Colombia's hemispheric neighbors, both of which are goals of newly-elected President Santos.

ii. Do you believe the Columbian government has increased its efforts to combat drug cartels that supply drugs to the U.S. and/or reformed its law enforcement and judicial systems as it relates to drug-related crime? If so, how effective have those efforts been?

ANSWER: The Colombian government has made major strides against drug cartels; ideological terrorist movements involved in drug trafficking, and have enhanced its law enforcement and judicial systems. As I mentioned above, the Colombian experience has become an important international standard for how to transform a nation once at great risk from narco-terrorists into a nation able to defend its people and its institutions with justice, security, and growing economic prospects.

4. As of 2010, drug offenses make up approximately 29% of all federal offenders currently imprisoned in the federal system. Approximately 17.7% of those drug offenders were

convicted of methamphetamine-related crimes, and those offenders serve the second longest average length of federal imprisonment. Methamphetamine is a particular problem in the State of Oklahoma, and federal drug policies appear to have done little to reduce the supply of or demand for this drug in Oklahoma.

a. Do you have a strategy in mind for reducing the supply of methamphetamine and/or how to coordinate with state and local law enforcement, specifically in the states with the highest usage rate, to address the supply of and demand for this drug? Please explain.

ANSWER: The passage of the Combat Methamphetamine Epidemic Act (CMEA), which restricted the diversion of precursor chemicals such as pseudoephedrine made it harder for people to produce meth. A key element of any strategy to reduce methamphetamine must be reducing access to precursor chemicals such as pseudoephedrine, Laboratory incidents, including those in Oklahoma, fell steeply after passage of the CMEA but are now increasing, particularly in the south and Midwest. I understand ONDCP is closely following the effect of legislation passed in both Oregon and Mississippi that returned pseudoephedrine and ephedrine to prescription only status. The number of methamphetamine lab incidents in both states has fallen dramatically since the passage of this state legislation. Methamphetamine produced in Mexico is also a rising threat, as we can tell from border seizures. Additionally, I understand that restricting the international flow of precursor chemicals now being smuggled into Mexico and Central America is a high priority for the Office of Supply Reduction, and these efforts will be aided by the developments occurring in conjunction with the Merida Initiative and the Central America Regional Security Initiative. Coordination with state and local law enforcement as well as tribal partners is critical to stemming the production of methamphetamine in the United States. If confirmed, I will work closely with my counterpart, Deputy Director of the Office of State, Local, and Tribal Affairs, Ben Tucker and leverage his oversight of the High Intensity Drug Trafficking Area Program to connect with our state, local and tribal entities.

> b. What is your assessment of the threat to our country, particularly our youth, of methamphetamine versus other types of drugs?

ANSWER: Methamphetamine is a very dangerous threat to the American people, particularly our youth. While the average age of first time meth use is older than for other drugs, the threat to youth also lies in the toxic nature of meth labs and the fact that children are too often exposed to these labs in the home. Meth is uniquely dangerous because it can be manufactured with easily available ingredients.

Meth intoxication too often leads to violent, irrational behavior that threatens others. In fact, meth use is a major risk to public health. Because of the effect of meth on users and how it is manufactured, there is a disproportionate impact of this drug on law enforcement and on community health. That said comparing meth to other drugs is difficult. There is no question that the effect is disastrous. Yet it is clear to those who have experienced meth in their lives or in their communities, the drug is particularly vicious. Though the absolute

number of users remains smaller than the other major drugs of abuse, the disproportionate impact on meth use on families exposed to its production or at the mercy of meth-related violence and illness, this drug must be at the forefront of our supply and demand reduction efforts.

Responses of Stephen N. Six Nominee to be United States Circuit Judge for the Tenth Circuit to the Written Question of Senator Chuck Grassley

- On April 2, 2010, you issued a statement on the constitutionality of the health care law stating, "I do not believe that Kansas can successfully challenge the law. Our review did not reveal any constitutional defects, and thus it would not be legally or fiscally responsible to pursue the litigation." Since enactment of the Affordable Care Act, two federal district court judges have held the individual mandate in the Act to be unconstitutional.
 - a. Do you stand by your determination that there are no "constitutional defects" with the health care law?

Response: As Attorney General I had the research attorneys in our office review and analyze each of the constitutional claims advanced in the challenges to the federal healthcare legislation. The conclusion of the attorneys in the office and my conclusion after that review was that there was little to no chance of succeeding on the constitutional challenges. However, subsequent to April 2, 2010 when I made that statement, two federal district court judges have studied the constitutionality of the law and come to different conclusions. The issue is now in the federal appellate courts and will be resolved ultimately by the Supreme Court. If confirmed and appropriate for me to hear the case under the recusal authorities, I would follow any applicable Supreme Court or Tenth Circuit precedent.

b. Given that you took a public stance on this issue when you served as Kansas Attorney General, will you, if confirmed, recuse yourself from hearing cases related to the constitutionality of the health care law?

Response: It is difficult to make a decision about recusal on hypothetical cases that may relate in some way to the federal healthcare legislation when the issues or facts are unknown. If confirmed, I would follow the recusal statutes and judicial codes of conduct. After a review of the recusal authorities and a consideration of this issue, I believe that recusal may be the result.

2. According to a February 3, 2010 Office of Attorney General press release, your office conducted a multi-jurisdiction drug bust resulting in the arrest of 17 individuals for allegedly manufacturing and selling meth amphetamines. Unfortunately, it now appears that the prosecution of these individuals may be in jeopardy. On March 9, 2011, Judge Brazil, in State v. Bruce, No. 2010 CR 23 (Kan. Dist. Ct. Mar. 9, 2011) (order granting motion to suppress) (attached, for your reference), suppressed the wiretap evidence that was instrumental to the cases, holding that you failed to comply with federal law requiring the state's principal prosecutor to authorize the application for electronic wiretaps. As the state's

Attorney General, you were the principal prosecutor, but the wiretap application was approved not by you, but an Assistant Attorney General.

a. According to Judge Brazil, you applied for only two wiretaps during your tenure as Attorney General. The first was signed by you, but the second was not. Why did you authorize AAG Disney to sign the wiretap application, rather than signing it yourself?

Response: Mr. Disney was the Deputy Attorney General in charge of the criminal division. He proposed the procedure where I would authorize the wiretap but delegate the necessary steps to get the documents before the judge to him. Mr. Disney was an experienced prosecutor and I relied on his presentation in this area of criminal law.

b. When you gave written authorization to AAG Disney to apply for ex parte orders authorizing the interception of wire, oral or electronic communication in this case, were you aware of the Kansas Supreme Court's decision in State v. Farha, 218 Kan. 394 (1975) that a prior Kansas statute was unlawful because it purported to grant authority to an assistant attorney general to make an application for a wiretapping order, rather than vesting that authority in the principal prosecuting attorney, as called for by 18 U.S.C. § 2516(2)? If you were aware of the case, how did it factor into your decision to delegate to AAG Disney?

Response: I do not recall being aware of this case.

c. Were you aware of the federal statute (18 U.S.C. § 2516(2)) requiring minimum standards in authorizing the use of a wiretap in drug investigations when you gave AAG Disney authorization to apply for a wiretap? If so, how did this factor into your decision to delegate to AAG Disney?

Response: I participated in a briefing by Mr. Disney where the procedure described in 2a was proposed. I do not recall if he presented information on this statute. I was not independently aware of it.

- d. Even assuming that Kansas state law permitted you to delegate the authority to apply for wiretaps
 - i. Do you believe that 18 U.S.C. § 2516(2) permits a state to adopt more permissive wiretap authorization standards than those required by federal law?

Response: I have never considered that issue. If confirmed and presented with this issue I would apply the applicable Supreme Court and Tenth Circuit precedents.

ii. Do you agree with the Kansas Supreme Court in In re Olander, 213 Kan. 282, 285 (1973) that both the Kansas legislature and the U.S. Congress "have carefully restricted the right to apply for the use of electronic bugging devices to a very select coterie of public officers" because "[n]o area of the law is more sensitive than that of electronic surveillance, since such activity intrudes into the very heart of personal privacy"? Please explain your answer.

Response: Yes. I believe that balancing the needs of law enforcement to infiltrate drug gangs with the personal privacy interests of all Americans is a very sensitive area and requires careful consideration.

e. According to Judge Brazil, both you and AAG Disney testified that the authorization you granted was signed specifically in regard to this case, "but the authorization on its face appears to be unlimited in time and circumstance." Was it your intention to give AAG Disney unending authority to apply for wiretap orders?

Response: No.

f. Is it your belief that K.S.A. 75-710, which grants general authority to assistant attorneys general to act on behalf of the attorney general, supersedes K.S.A. 22-2515, which specifically designates that the attorney general must apply for an order authorizing electronic surveillance, despite the general principle of statutory interpretation that general statutory provisions do not repeal previously enacted specific statutory provisions unless done so explicitly? In your answer, please explain your understanding of how these two statutes operate together.

Response: After further consideration of the statutes as a result of this case, I believe the attorney general should not delegate procedural responsibility to obtain a wiretap to a Deputy Attorney General.

g. According to Judge Brazil's findings of fact, you made a "cursory but not full examination of the application" prior to authorizing Assistant Attorney General (AAG) Barry Disney to apply for ex parte orders. State v. Bruce, No. 2010 CR 23, Order Granting Mot. to Suppress at 5. 1s this accurate? If so, why did you fail to give your full attention to such an important case?

Response: Under the procedure described in 2a, I authorized the wiretap, but delegated actions in the wiretap process to the Deputy Attorney General in charge of the criminal division. At the time I believed I fully considered the request. In hindsight I should not have delegated actions in the wiretap process to the Deputy Attorney General in charge of the criminal division.

h. According to Judge Brazil, "there appears to have been no policy or procedure in place in the attorney general's office to ensure compliance with federal or state wiretap legislation." State v. Bruce, No. 2010 CR 23, Order Granting Mot. to Suppress at 4. Is this accurate? If so, why didn't you have a policy to ensure compliance with the federal wiretap statute? If not, please explain the established policy or protocol and indicate whether it was followed in this instance.

Response: At the time I became attorney general I was not aware of any written policy in place in the Attorney General's Office dealing with wiretaps and I am not aware of any policy that preexisted my tenure. When the application for a wiretap came before me, we followed the procedure set forth in the wiretap statute. Wiretaps were done infrequently and no one suggested and I did not think of developing a written policy.

i. Do you disagree with Judge Brazil's decision in this case? Why or why not?

Response: If I had been aware of the authorities in Judge Brazil's opinion at the time I made the decision to authorize a wiretap I would not have delegated actions in the wiretap process to the Deputy Attorney General in charge of the criminal division. I am not critical of the Judge's opinion.

3. Several commentators, including Professor Goodwin Liu, previously nominated to be a Circuit Judge for the Ninth Circuit, have said that Lopez and Morrison are difficult or "incoherent" standards in outlining the limitations of the Interstate Commerce Clause. Do you believe these cases provide a workable limit on Congress' commerce power?

Response: In *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000) the Supreme Court set forth the limitations on Congress' power under the Commerce Clause and held that its power is not unlimited. I would apply those precedents and any other relevant cases of the Supreme Court if confirmed.

4. In your final analysis of the health care law, you determined that challenges to its mandate requiring that states increase eligibility for Medicaid or risk losing funds lacked merit saying, "the U.S. Supreme Court for nearly a century has repeatedly reaffirmed the power of Congress to impose requirements on the States as a condition of the receipt of federal funds." However, Supreme Court precedent also suggests this power is limited. In South Dakota v. Dole, the Court stated that, "in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns into compulsion." In that case, the Court found that the loss of only 5% of federal funds available was not sufficient to constitute compulsion.

In your view, when, if ever, could a financial inducement to the states by the federal government constitute compulsion?

Response: I do not have an opinion about when pressure would turn into compulsion. The Supreme Court has held that Congress' power is not unlimited. If confirmed and presented with this issue I would follow the precedent of the Supreme Court or any applicable Tenth Circuit decisions.

5. In testimony before this Committee, former Solicitor General Charles Fried said the unfunded mandate posed a "constitutional worry" because the funds at issue are "huge." Is it your opinion that Mr. Fried's concerns are misplaced? Why or why not?

Response: I am not familiar with Mr. Fried's testimony or his analysis and have not formed an opinion. Regardless of any opinion I would hold, I would follow Supreme Court and Tenth Circuit precedent on this issue.

- 6. As Attorney General, you signed onto an amicus brief in Citizens United v. FEC that argued the Supreme Court should refrain from overturning its decision in Austin v. Michigan Chamber of Commerce. Austin held that a state statute prohibiting corporations from making independent expenditures in support of political candidates from its general treasury was constitutional. In a 5 to 4 decision the Supreme Court overturned its decision in Austin and held the campaign finance restrictions on corporations at issue in the case were unconstitutional.
 - a. Many have been highly critical of the Supreme Court's decision. Do you believe Citizens United was correctly decided?

Response: If confirmed as a circuit court judge I would apply the precedent of *Citizens United* and all Supreme Court decisions regardless of my personal views.

b. If you have not already done so, please take this opportunity to review Citizens United. Do you believe it is a fair and accurate characterization of the Supreme Court's decision to say that it "reversed a century of law"? Why or why not?

Response: The holding in *Citizens United* was based on the First Amendment and the Supreme Court's many cases applying the First Amendment some of which are described by the court as conflicting lines of precedent. If confirmed I would apply the *Citizens United* precedent as well as any other applicable Supreme Court precedent.

7. Kansas has a statute providing in-state college tuition to children of illegal immigrants. While you were Attorney General, a similar law was struck down by a California appeals court, although this decision was later reversed by the California Supreme Court. At the time of the appellate court's decision, you defended the legality of the Kansas law in the news, saying that "Federal courts have rejected [a legal] challenge to Kansas law." However, it is my understanding that the federal

court never reached the merits in the case against Kansas's statute, but dismissed the case for lack of standing.

a. Current federal law states,

"Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State ... for any postsecondary education benefit *unless* a citizen or national of the United States is eligible for such a benefit ... without regard to whether the citizen or national is such a resident." (8 U.S.C. § 1623)

Do you believe the Kansas statute is consistent with federal law? Why or why not?

Response: The issue of any conflict between the federal statute and the Kansas statute was not considered during my time as Attorney General. If confirmed, should the issue come before the Tenth Circuit; I would apply relevant Supreme Court and Tenth Circuit precedent.

b. If a state law directly conflicts with a duly enacted federal law, does the State Attorney General have a duty to refuse to defend the state law?

Response: As Attorney General it was my duty to presume laws passed by the state legislature were constitutional and to defend those laws if challenged. I do not recall having an occasion to consider whether a state attorney general has a duty to refuse to defend state law in a situation where that law was in a direct conflict with a federal law.

c. Did you ever perform an analysis to determine if a conflict existed? If so, what was your conclusion and why?

Response: I do not recall performing such an analysis.

8. Do you believe that our federal government is one of limited and enumerated powers?

Response: Yes, under the Tenth Amendment to the United States Constitution and as the Supreme Court discussed in *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000) our federal government is one of limited and enumerated powers.

9. What does the concept of separation of powers mean for the federal courts? If confirmed, will this be a governing principle which you will follow?

Response: Under our Constitution the separation of powers is a fundamental part of the foundation of our system of government. The separation of powers limits each branch of

government to its appropriate role. If confirmed as a circuit court judge, I would follow the Supreme Court and Tenth Circuit precedents in this area.

10. Do you believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress that it deems unconstitutional? If so, under what circumstances, and applying what factors?

Response: Yes, if Congress exceeds its authority under the Constitution, as determined by Supreme Court precedents, it is appropriate for a judge to strike down an act of Congress.

11. What is the most important attribute of a judge, and do you possess it?

Response: The most important attributes of a judge are impartially applying the law to the facts and working hard. I believe I have those attributes.

12. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should treat all litigants with respect and patience and work hard to listen and not prejudge issues. I believe I possess these attributes.

13. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

14. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: I would begin with the text of the statute or Constitutional provision at issue. I would also examine closely analogous Supreme Court or Tenth Circuit cases and cases that are closely related to the issue from other circuits. Additionally, if the Supreme Court has developed an approach or framework to decide a closely related issue or area of law, that can be a useful approach.

15. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

1395

Response: If confirmed, I would apply the binding precedent regardless of my personal views.

16. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

Response: Precedent within the Tenth Circuit can only be overturned by the entire court sitting *en banc*. The *en banc* proceedings should be used infrequently and only when an issue is of exceptional importance or when it is required to establish uniformity in the panel decisions, as discussed in the federal rules governing appellate procedure. The principle of *stare decisis* should govern any consideration to overturn circuit court precedent.

17. Please describe with particularity the process by which these questions were answered.

Response: 1 reviewed some of the cases to refresh my recollection and drafted the answers. I discussed the draft with a Department of Justice staff member. I submitted a final draft to the Department of Justice for submission to the Committee.

18. Do these answers reflect your true and personal views?

Response: Yes.

1396

Senator Chuck Grassley Additional Questions for the Record Stephen Six, U.S. Court of Appeals for the Tenth Circuit

I understand from your testimony and your written account of events that, generally, you allowed your Assistant Attorneys General to handle the legal actions relating to the prosecution of Planned Parenthood. However, as you rightly concede in your letter, you were the state's chief prosecutor and responsible for overseeing all cases in which your Office was involved, and it was under your name that legal actions preceded. Please address these questions candidly.

1. In testimony at your nominations hearing, you said that there was "never any decision on my part to pursue or not pursue" the case against Planned Parenthood. However, in a February 7, 2008, Associated Press article, you are quoted as saying the following in relation to the Planned Parenthood investigation, "That case was closed, and I'm not doing anything to reopen it." This quotation suggests that you made an affirmative decision to decline to reopen the case. How is this statement consistent with your testimony that you never made any decision whether or not to reopen the case against Planned Parenthood?

Response: As you may be aware, I was not involved in the investigation and prosecution of Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc., which began five years before I became Attorney General of Kansas. My understanding of the events before I became Attorney General is based on information taken from the following Kansas Supreme Court opinions:

Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. v. Kline, 287 Kan. 372 (2008)

State v. Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc., 291 Kan. 322 (2010)

State of Kansas, ex rel, Stephen Six, Attorney General of Kansas v. Anderson, (Kansas Supreme Court Case No. 99,050) The case was dismissed without written opinion. (Attorney General Morrison filed this case and I was substituted in after he resigned and I was sworn in)

Alpha Medical Clinic v. Anderson, 280 Kan. 903 (2006)

I became Attorney General on January 30, 2008. It is my understanding that Attorney General Morrison completed his investigation of Planned Parenthood and closed the case six months before I took office. After becoming Attorney General, I did not re-review any previously closed cases in the office. At the time I took office, the ease against Planned Parenthood, previously investigated by the Kansas Attorney General's Office

¹ Hanna, John, AP NewsBreak: AG's office subpoenaed by Tiller grand jury, Associated Press, February 7, 2008.

and closed, was under investigation by a grand jury in Johnson County, Kansas and Johnson County District Attorney Kline was prosecuting that same case.

2. When you made the statement quoted by the Associated Press, were you aware of Judge Anderson's determination that Planned Parenthood's records – in his possession as custodian by appointment of the Kansas Supreme Court – appeared to have been manufactured in violation of Kansas criminal law?

Response: I do not recall being aware of it.

3. Given Judge Anderson's concerns, as well as his statements questioning A.G. Morrison's decision to clear Planned Parenthood of wrongdoing, did you or anyone in your office (including the criminal division) reevaluate A.G. Morrison's decision to clear Planned Parenthood of any wrongdoing?

Response: No. At the time I became Attorney General on January 30, 2008, the office did not re-review any previously closed cases. Additionally at the time I became Attorney General, the case against Planned Parenthood was the subject of a grand jury investigation in Johnson County, Kansas and the case was being prosecuted by District Attorney Kline, also in Johnson County, Kansas.

a. If yes, what was the evaluation's conclusion?

Response: Please see the answer to question 3.

b. If no, why weren't Judge Anderson's concerns -- a District Court Judge with first-hand knowledge of the situation -- considered important enough to warrant a reevaluation?

Response: Please see the answers to questions 2 and 3.

4. I understand that the mandamus actions undertaken by the Attorney General's office against District Attorney Kline (See CHPP v. Kline) and Judge Anderson (See Morrison v. Anderson) were commenced prior to your appointment. However, as Attorney General, your office continued to pursue these actions. Given the issues mentioned above, did you, or anyone in your office, reevaluate the legal positions taken by A.G. Morrison in these cases? Please explain why or why not. If your office did reevaluate the legal positions please explain the conclusion of that evaluation.

Response: After I became Attorney General, the Kansas Supreme Court ordered that my office file a brief in each case. The brief that was filed in the case represented the position of the Attorney General's Office. I do not recall re-evaluating any previous position of the Attorney General's Office in coming up with the position taken by my office and filed with the Court. Assistant Attorneys General drafted the briefs and they were filed with my approval. In the mandamus action filed by Planned Parenthood

against Kline, my office sought the return of the file taken by Kline from the Attorney General's Office. It is my understanding that this is the same position taken by Morrison. In the mandamus action against Judge Anderson my office sought Court supervision of the medical records. It is my understanding that Morrison sought to have the records returned to Planned Parenthood.

5. At your nomination hearing, I asked you whether you were ever pressured by Governor Sibelius or anyone in her administration not to pursue charges against Planned Parenthood. You responded in part, "I never had a discussion with her about any topics or any cases in the Attorney General's office in our criminal division." Did you, or anyone in your office, communicate with anyone in the Governor's Administration about pursuing criminal charges against Planned Parenthood? If so, please explain the nature of those conversations and with whom they transpired.

Response: I did not discuss the topic of pursuing eriminal charges against Planned Parenthood with anyone in Governor Sebelius' administration. I do not recall anyone in my office telling me they discussed the topic with anyone in Governor Sebelius' administration.

CHPP v. Kline

1. When you became Attorney General you replaced A.G. Morrison in the mandamus action in CHPP v. Kline. A.G. Morrison's mandamus action sought to have D.A. Kline return CHPP's medical records. However, the final brief submitted in your name sought, "each and every copy of those records that [Kline] has made and any and all other evidence Kline developed and obtained while he was acting as Attorney General that he took with him to Johnson County." (Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. v. Kline, 197 P.3d 370, 393 (2008)). If it was not your intent to interfere in any way with D.A. Kline's investigation, why was your request for Mr. Kline to return all the documents, and not simply provide your office with complete copies of all the documents in his possession?

Response: Former Attorney General Morrison intervened in the mandamus action filed by Planned Parenthood against Kline in July 2007 and sought return of the file containing the materials from the Judge Anderson inquisition taken by Kline when he left the Attorney General's Office. I became Attorney General six months later on January 30, 2008. Pursuant to a Kansas Supreme Court Order my office filed a brief in May 2008 asserting that former Attorney General Kline should return the file as improperly taken State property. It is my understanding that this is the same position previously taken by Morrison. (Memo of AG Morrison In Support of Pet. for Mandamus, at 18) ("return any and all evidence produced in response to the now-closed inquisition to the Office of the Attorney General"). The Kansas Supreme Court in Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc. v. Kline, 287 Kan. 372 (Kan. 2008) ordered Kline to return a copy of the medical records and the investigation file taken

from the Attorney General's Office but permitted him to keep a copy for his criminal case against Planned Parenthood.

2. It is my understanding that when Mr. Kline left the AG's office, he made copies of the records but deposited the original medical records with Judge Anderson. Furthermore, it is my understanding that AG Morrison was informed of the location of the records within the first few days of assuming office. Is this a correct understanding of the status of the records?

Response: I became Attorney General more than a year after Attorney General Morrison was sworn in and the activities referenced in the question took place. I do not know the status of the records when Attorney General Morrison took office. The Kansas Supreme Court noted that no inventory of the file was completed when Morrison took office and that no Planned Parenthood records were in the office. *CHPP*, 287 Kan. at 384.

a. If so, why was it necessary for you to obtain copies of the records, when you had the originals available to you?

Response: When I became Attorney General on January 30, 2008, there were not any Planned Parenthood records in the office. Prior to my becoming Attorney General, the Kansas Attorney General's Office had sought the return of the file taken by former Attorney General Kline when he left office. I did not re-evaluate the position taken by the Attorney General's Office that former Attorney General Kline should return the file as improperly taken State property.

b. Did you seek to obtain just a return of the records which Mr. Kline obtained while AG, or did you also seek to obtain any other evidence, including evidence he may have obtained as a result of his investigation while in his position as District Attorney?

Response: My office filed a brief in the CHPP v. Kline mandamus action seeking the return of the file created by Kline while he was Attorney General of Kansas.

c. Was any of the evidence which Mr. Kline had gathered, other than the original medical records, shared with Planned Parenthood or their attorneys?

Response: No. It is my understanding that only the medical records were returned to Planned Parenthood's attorneys.

3. The Kansas Supreme Court ultimately ruled in Mr. Kline's favor on the merits of the case, but ordered him to provide complete copies of all the documents to your office. Had you been successful in requiring Mr. Kline to return all of the documents, wouldn't that have effectively prohibited any case against Planned Parenthood from going forward? Response: At the time I became Attorney General a case against Planned Parenthood was going forward before a grand jury in Johnson County, Kansas. The grand jury case against Planned Parenthood continued until March 2008 when the grand jury refused to return an indictment.

My office was not involved in Kline's prosecution of Planned Parenthood in Johnson County, Kansas. The Court's recitation of the facts in *State v. CHPP*, 291 Kan. 322, 338 (2010) show that Kline had access to the Planned Parenthood records from Judge Anderson and that pursuant to Kline's subpoena Judge Anderson testified and brought the records to court. Later in Kline's case, as discussed in *State v. CHPP*, he issued another subpoena to Judge Anderson seeking the Planned Parenthood records that was quashed by Johnson County District Court Judge Stephen Tatum. Kline appealed Judge Tatum's order and in *State v. CHPP*, 291 Kan. 322 (2010), the Kansas Supreme upheld portions of the order and reversed portions of the order and allowed Judge Anderson to produce the Planned Parenthood records. *State v. CHPP*, 291 Kan. at 363.

a. If so, do you believe this result would have been in the interest of justice, considering Judge Anderson's concerns about "manufactured records"?

Response: As discussed in the answer to question 3, the case against Planned Parenthood was being investigated by a grand jury. As district attorney, Kline had subpoena power and pursuant to Kline's first subpoena, Judge Anderson brought the Planned Parenthood records to court in Kline's criminal proceedings. Kline again exercised his subpoena power to obtain the records later in the case and the district court quashed his subpoena.

4. Did you, or anyone in your office, have a conversation with anyone representing Planned Parenthood or any representative of Planned Parenthood regarding your brief filed in CHPP v. Klein? If so, please explain the nature of those conversations and with whom they transpired.

Response: I did not have any conversations with Planned Parenthood's attorneys or any representative of Planned Parenthood on this topic. I do not recall anyone in my office telling me they had conversations with Planned Parenthood's attorneys or any representative of Planned Parenthood about the brief filed by the Kansas Attorney General's Office.

5. Did you, or anyone in your office, have discussions with then Governor Sibelius, or anyone in her Administration concerning the mandamus actions against D.A. Kline? If so, please explain the nature of those conversations and with whom they transpired.

Response: I did not discuss the topic of Planned Parenthood's mandamus action against former Attorney General Kline with Governor Sebelius or anyone in Governor Sebelius' administration. I do not recall anyone in my office telling me they discussed the topic with Governor Sebelius or with anyone in Governor Sebelius' administration.

Morrison v. Anderson

1. When you became Attorney General you also replaced former A.G. Morrison in his mandamus action to require Judge Anderson to turn over the CHPP medical records in his custody. Were you, or members of your office, aware of Judge Anderson's statement that to return the documents obtained from Planned Parenthood, as you requested, "would unacceptably increase the risk that evidence could be lost, destroyed or compromised...it is difficult to understand how this could benefit the citizens of Kansas"?

Response: I was not aware of Judge Anderson's statement. I do not recall anyone in my office discussing Judge Anderson's statement with me.

a. If so, did your office take into account Judge Andersons concern in your continuation of the mandamus action? Please explain why or why not.

Response: Morrison filed the mandamus action against Judge Anderson six months before I became Attorney General. It is my understanding that Morrison sought to have the medical records returned to Planned Parenthood.

In the mandamus action against Judge Anderson, my office sought Kansas Supreme Court supervision and protection of these records. The motion suggested that the Court consider quashing the subpoena issued by Kline and leaving the records with Judge Anderson during the pendency of the mandamus case, placing the records in the custody of the Clerk of the Supreme Court or with District Court Judge Stephen Tatum who was assigned to the criminal case against Planned Parenthood. Any of these actions would, in my view, protect the records.

2. Did you or anyone in your office have a conversation with anyone representing Planned Parenthood or any representative of Planned Parenthood about seeking a judicial order compelling Judge Anderson to return the medical records in his possession? If so, please explain the nature of those conversations and with whom they transpired.

Response: Former Attorney General Morrison intervened in the mandamus case against Judge Anderson seeking return of the medical records in July of 2007, six months before I took office. After I became Attorney General on January 30, 2008, I did not speak with anyone representing Planned Parenthood or any representative of Planned Parenthood about this topic. I do not recall anyone in my office telling me they spoke with anyone representing Planned Parenthood or any representative of Planned Parenthood about the mandamus action against Judge Anderson.

3. Did you, or anyone in your office, have discussions with then Governor Sibelius, or anyone in her Administration, concerning the mandamus action against Judge

Anderson or the eventual emergency protective order sought by your office? If so, please explain the nature of those conversations and with whom they transpired.

Response: The mandamus case against Judge Anderson was filed under seal. I did not discuss the topic of the mandamus action against Judge Anderson or the motion for a protective order with Governor Sebelius or with anyone in Governor Sebelius' administration. I do not recall anyone in my office telling me they discussed the topic with Governor Sebelius or anyone in Governor Sebelius' administration.

4. During his investigation, Mr. Kline issued a subpoena to Judge Anderson to testify at a hearing regarding Planned Parenthood. Based on unsealed court documents, Judge Anderson notified the Kansas Supreme Court of the subpoena and that he intended to comply with it unless directed otherwise by the Court. Six v. Morrison, No. 07-099050-S (2008), Notice of Collateral Proceeding and Receipt of Subpoena for Records. The same day, you sought an emergency protective order to quash the subpoena. Is it common practice for the State Attorney General to interfere with subpoenas and requests for evidence by local prosecutors? If so, can you provide any examples of other cases where Attorney General has done so?

Response: The Kansas Attorney General's Office filed the motion for the protective order to ensure that the Kansas Supreme Court was aware of the subpoena directed to the records that were the subject of the mandamus case against Judge Anderson pending before the Court and to ensure that any further movement of the records took place under the supervision of the Court. The motion suggested that the Court consider quashing the subpoena, placing the records in the custody of the Supreme Court Clerk during the pendency of the mandamus case against Anderson, or placing the records in the custody of Judge Stephen R. Tatum who was handling the criminal case filed by Kline against Planned Parenthood in Johnson County. The Kansas Attorney General's Office believed that any of these actions would have provided Court supervision and protection of the records.

5. You cited privacy concerns in your emergency protective order request. You similarly alluded to such concerns in your testimony before the Committee and in the written statement you provided to me. But, it is my understanding that the medical records were redacted to remove any identifying information pursuant to a previous court order. Is this accurate?

Response: The Kansas Attorney General's Office believed that the records contained information that could be used to identify a patient. Judge Anderson noted the redacted records could be used to identify a patient and the Kansas Supreme Court noted this risk of disclosure of patient privacy from the redacted records in *Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc.*, 291 Kan. 322, 363 (2010).

a. When were the medical records first redacted, and by whom?

Response: I do not know. When I became Attorney General there were not any Planned Parenthood records in the office.

b. If the records where redacted to remove patient identification information, how did they pose privacy concerns?

Response: Please see the answer to 5.

6. Do you agree with Judge Anderson's assessment that the medical records obtained from the abortion clinics in Kansas pursuant to subpoenas requested by former Attorney General Phil Kline were redacted of identifies even <u>beyond</u> the requirements of HIPPA? See Morrison v. Anderson, Case No. 07-99050-S (response of Judge Richard Anderson to Petitioner Attorney General Paul J. Morrison's Petition for Writ of Mandamus) (footnote 1).

Response: I have never reviewed the records. I have no reason to disagree with Judge Anderson's assessment.

General Questions

1. It has been reported that between 2002 and 2003, Kansas abortion providers drastically underreported incidents of child sexual abuse/statutory rape, filing only 2 reports of child sexual abuse despite performing 166 abortions on children 15 years old or younger. Did you take any action to support or initiate an investigation into this apparent underreporting? If so, what action did you take?

Response: After I became Attorney General in January 2008, I am not aware of the Kansas Attorney General's Office conducting such an investigation.

2. Did your office have access to reports provided by abortion providers under K.S.A. 65-445 to the Kansas Department of Health and Environment?

Response: After I became Attorney General on January 30, 2008, I am not aware of my office seeking access to any reports under K.S.A. 65-445. The statute provides that the reports may be disclosed to the Attorney General's Office on a showing that reasonable cause exists to believe a violation of the Act occurred.

3. Are the reports provided by abortion providers under K.S.A. 65-445 redacted of patient identities?

Response: I have never reviewed any such reports. The statute, K.S.A. 65-445, provides that the reports should not contain the patient's names.

4. Is it accurate to say that one of the reasons that Kansas's law requires such reports is to ensure compliance with Kansas's abortion restriction laws?

Response: Yes.

5. Did you ever receive a request from a District Attorney to assist in gaining access to those reports in order to move forward with a pending criminal case? If so, what was your response and why?

Response: I do not recall anyone discussing such a request with me. If a request was made in a criminal case by a District Attorney it likely would have been handled by the Assistant Attorneys General in the Criminal Division.

6. Did you, or anyone in your office, discuss the criminal proceeding against Planned Parenthood with Kansas Department of Health and Environment staff? If so, please explain what these discussions entailed.

Response: I did not discuss criminal proceedings against Planned Parenthood with Kansas Department of Health and Environment staff. I do not recall anyone in my office telling me they discussed criminal proceedings against Planned Parenthood with Kansas Department of Health and Environment staff.

7. Did you, or anyone in your office, ever seek to prevent Kansas Department of Health and Environment staff from working with law enforcement officers or District Attorney Office's in investigations pertaining to violations of Kansas's abortions laws?

Response: I did not seek to prevent Kansas Department of Health and Environment staff from working with law enforcement officers or a District Attorney's office. I am not aware of anyone in my office doing so.

8. What is your understanding of the state of the law in Kansas, as enunciated by the State Supreme Court regarding who can enforce Kansas abortion law? Can a District Attorney do so, or is it limited to the AG's office? It seems the Supreme Court has taken contrary views on this issue. Can you provide any clarification?

Response: My understanding is that the Kansas Attorney General's Office does not have original criminal jurisdiction for criminal cases. The Kansas Attorney General's Office is required to be asked by a district or county attorney to assume jurisdiction in a case in order to become involved as prosecutors.

Responses of Stephen N. Six Nominee to be United States Circuit Judge for the Tenth Circuit to the Written Follow-Up Questions of Senator Chuck Grassley

1. In Question 2(d)(i), I asked if you believed that 18 U.S.C. § 2516(2) permits a state to adopt more permissive wiretap authorization standards than those required by federal law. You responded, "I have never considered that issue." Part of my evaluation of your nomination will be based on my assessment of your ability to properly interpret federal statutes and applicable precedent. This was an issue you should have considered prior to delegating the authority to authorize wiretaps, but apparently did not. Please take this opportunity to review the statute and any relevant case law and answer the question.

Response: Section 2516(2) provides that an appropriate state level official may, if authorized by state statute, apply to a judge for a wiretap and "such judge may grant in conformity with section 2518." Case law has interpreted this provision as allowing states to enact more restrictive legislation than the federal statute, but not less restrictive. State v. Farha, 218 Kan. 394, 400 (1975).

2. In response to Question 2(d)(ii), you said that "balancing the needs of law enforcement to infiltrate drug gangs with the personal privacy interests of all Americans is a very sensitive area and requires careful consideration." Do you believe that you gave "careful consideration" to this case when delegating the wiretap application to Mr. Disney, despite your admission that you were not aware of relevant Kansas and federal statutes and case law when making that decision? If no, why did you not give this matter "careful consideration"?

Response: The Deputy Attorney General presented the procedure of delegating steps in the wiretap application process to me and I relied on his presentation that the procedure complied with the requirements of the wiretap statute. The procedure in this case was that an Assistant Attorney General and the law enforcement officers working on the case determined that the office should request judicial approval for a wiretap. The Assistant Attorney General then presented this information to the Deputy Attorney General who agreed that an application was warranted. The Deputy Attorney General then briefed me on the request to proceed with judicial review of a wiretap application and the supporting reasons required by the wiretap statute. I authorized proceeding with an application. The Assistant Attorney General, the law enforcement officer and the Deputy Attorney General completed the application, supporting affidavits and presented the materials and sworn testimony to a judge for review. The judge reviewed the materials and approved the wiretap. At the time of the procedure described above, I thought we were complying with the legal requirements of the wiretap statute. I now believe I should not have delegated steps in the wiretap application process to a Deputy Attorney General. I should have reviewed this area of law myself. I am responsible for the error.

3. In your response to Question 2(e), you said that you did not intend to give Mr. Disney unending authority to apply for wiretap orders. If that was the case, why didn't the delegation stipulate that it was limited to these specific circumstances?

Response: I discussed the application procedure with the Deputy Attorney General and from this conversation he understood he was required to get my authorization to proceed with an application for a wiretap. I would agree that the written delegation is not limited to these specific circumstances. I cannot say that the delegation would have been better if it was limited in writing to these specific circumstances because, as I stated in the answer to question 2, I should not have delegated steps in the application process to the Deputy Attorney General.

4. In Question 2(f), I asked you to explain your understanding of how K.S.A. 75-710 and K.S.A. 22-2515 operated together. You did not answer that question. Please take this opportunity to carefully consider the question and provide an answer.

Response: Section 75-710 provides that "[a]ssistants [appointed by the Attorney General] shall act for and exercise the power of the attorney general to the extent the attorney general delegates them the authority to do so." Section 22-2515, the specific statute relating to applications for a wiretap, provides that the application for a wiretap may be made by "[t]he attorney general, district attorney or county attorney." In *State v. Farha*, the Kansas Supreme Court stated that this language in K.S.A. 22-2515, as applied to the Kansas Attorney General's Office, meant that the Attorney General was required to authorize an application for a wiretap under this statute, not an assistant appointed by the Attorney General. 218 Kan. at 403. Section 22-2515, as the specific statute authorizing who can apply for an application, would control over the more general statute, K.S.A. 75-710, relating to delegation of authority of the Attorney General.

- 5. In your response to Question 2(f), you stated that "After further consideration of the statutes as a result of this, I believe the attorney general should not delegate procedural responsibility to obtain a wiretap to a Deputy Attorney General." Further, in response to Question 2(i), you stated that "If I had been aware of the authorities in Judge Brazil's opinion at the time I made the decision to authorize a wiretap I would not have delegated actions in the wiretap process to the Deputy Attorney General in charge of the criminal division."
 - a. In light of this, please explain why the relevant Kansas and federal statutes and case law were not considered when making the decision to delegate authority.

Response: I made a mistake in not researching this area of law myself and personally reviewing these authorities. That was my error. The Deputy Attorney General presented the process of delegating necessary steps to get the application documents reviewed and signed by the judge after I authorized proceeding with the application. The Deputy Attorney General's presentation was that the

proposed process complied with the Kansas wiretap statute. I do not recall the specific authorities that were included in his presentation.

b. Do you not agree that it was part of your responsibility to be aware of these authorities?

Response: Yes, it was my responsibility.

6. In your responses, you repeatedly stated that Mr. Disney proposed the wiretap authorization procedure and you relied on his presentation. To the best of your knowledge, do you believe that Mr. Disney was unaware of the relevant authorities? Alternatively, do you believe he was aware of them but misapplied them in this case?

Response: I understand that the Deputy Attorney General's position was that a delegation could be appropriate if it is written, specific and limited. The reasoning was that K.S.A. 75-710 was amended after the State v. Farha case. The amendment relating to the delegation of the Attorney General's authority states: "Assistants appointed by the attorney general shall perform the duties and exercise the powers as prescribed by law and shall perform other duties as prescribed by the attorney general. Assistants shall act for and exercise the power of the attorney general to the extent the attorney general delegates them the authority to do so." Additionally, his position was that the delegation in this case was written and specifically delegated the authority to one individual, unlike the delegation rejected in *In re Olander*, 213 Kan. 282 (1973). This position is essentially the argument advanced by Chief Justice Fatzer in the dissent in Farha and In re Olander, 213 Kan. 282 (1973)(relying on United States v. Tortorello, 480 F.2d 764 (2nd Cir. 1973)("having the chief prosecuting officer pass on application which his assistants prepare and, after he has approved them, having them presented to the issuing judge. [The objective of 18 U.S.C. 2516(2)] will not be furthered by requiring the chief prosecuting officer to appear personally before the issuing judge."). The district court that reviewed the application procedure in this case held that this position was a misapplication of the relevant authorities. I am responsible for the delegation and the error.

7. As a federal appellate judge with the duty to apply the applicable precedents, how would you ensure that relevant statutes and precedents are not overlooked, as you concede happened here?

Response: Due to the responsibilities and demands of the job of Attorney General in many different areas of law, I relied on briefings or memoranda from Deputy and Assistant Attorneys General on legal cases and matters assigned to them or in their area of expertise. I usually would not re-research the legal conclusions or re-read the case law relied upon by these Deputy or Assistant Attorneys General. Previously, when I served as a state district court judge for three years, I researched the legal issues and read the case law on issues that appeared before me. If confirmed as a circuit court judge, I would continue my previous practice and review the briefs submitted in the case, all the relevant

cases and statutes at issue, and any other legal sources important to the case. I believe this would ensure that relevant statutes and precedents are not overlooked.

8. In Question 5, I asked you about former Solicitor General Charles Fried's statement about the constitutionality of an unfunded mandate. You said you were not familiar with Mr. Fried's testimony, and for that reason did not answer the question. Attached for your convenience is a copy of Mr. Fried's testimony (see pp. 34-35 for the relevant statement). Please take this opportunity to review his testimony and provide a thoughtful answer to the question.

Response: From the reference cited I noted the following comment by Professor Fried:

"FRIED:

The case that comes to mind is South Dakota against Dole, which required the states -- and that wasn't even a funding mandate -- required the states to alter the drinking age, and threatened them with the withdrawal of 5 percent of highway funds if they didn't comply.

And the Supreme Court said, "Well, 5 percent is so little that it's not that much of a threat."

Implicit in that is would you believe 10 percent? How about 50 percent?

And the unfunded mandate here is huge. And that's why I said to Senator Grassley that I think there really is a constitutional worry about that." (Fried Testimony provided with these questions, pgs 34-35, emphasis in the copy provided.)

I agree with Professor Fried's testimony that South Dakota v. Dole, 483 U.S. 203 (1987) is the Supreme Court case that provides guidance in analyzing when a congressional incentive moves from pressure into unconstitutional coercion. In South Dakota, the Supreme Court determined that the incentive offered by Congress to states to raise the drinking age did not rise to the level of improper coercion. Professor Fried asks whether a financial penalty of 10% or 50% imposed on a state for failing to follow a mandate imposed on the states would cross the line drawn by the Supreme Court in South Dakota. Because it is difficult to know the legal and factual context in which a challenge may be presented and because the issue could come before me if confirmed, it would be inappropriate to state agreement in advance on when pressure turns to compulsion in an unfunded mandate. Professor Fried's comment concludes that the unfunded mandate in the federal healthcare legislation is huge and "is a constitutional worry. . ." His comment about "constitutional worry" in the federal healthcare legislation has been reflected in the opinions of the various federal district courts that have ruled on the federal healthcare legislation. As Attorney General my office reviewed the constitutional issues in the federal healthcare legislation and on April 2, 2010, concluded that there was little to no chance of succeeding on the constitutional claims. Subsequent to that decision several federal district courts have ruled on the constitutional concern identified by Professor

Fried. As a former state official I am concerned about the challenges presented by the federal government placing unfunded mandates on the state. If confirmed, were challenges to the federal healthcare legislation to come before me, as I stated in response to your first set of questions 1(b), given my public statements on the federal healthcare legislation I believe recusal may be appropriate.

9. In Question 6(b), you did not answer whether or not you believed it was a fair and accurate characterization of Citizens United v. FEC to say that it "reversed a century of law." Please take this opportunity to review the decision, and provide a thoughtful response regarding whether or not you believe this characterization is accurate.

Response: In Citizens United v. Federal Election Commission, 130 S. Ct. 876 (2010), the Court analyzes conflicting lines of First Amendment cases and overrules Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990)(holding "that political speech may be banned based on the speaker's corporate identity") and McConnell v. Federal Election Commission, 540 U.S. 93 (2003)(overruling the part relating to a statutory restriction on independent corporate expenditures). Citizens United, 130 S. Ct. at 886, 913. The Supreme Court states that in overruling Austin "[w]e return to the principle established in Buckley and Bellotti, that the Government may not suppress political speech on the basis of the speaker's corporate identity." Citizens United, 130 S. Ct. at 913. The Court squared the facts before it with these conflicting lines of First Amendment precedent and said it was restoring pre-1990 Court precedent. If confirmed as a judge, I would faithfully apply the Supreme Court's precedent in Citizens United.

10. In Question 7(a), I asked you about the consistency of Kansas' statute providing instate college tuition to children of illegal immigrants with 8 U.S.C. § 1623. You responded that this issue "was not considered during my time as Attorney General." Respectfully, I did not ask whether it was ever considered during your time as Attorney General. Please take whatever time necessary and answer the question I initially asked: do you believe the Kansas statute is consistent with federal law? Why or why not? Again, I am trying to understand your approach to legal analysis; simply stating that you would apply relevant precedent does not answer the question, and is not sufficient.

Response: I have not developed an opinion on the legal issues involved in these statutes. Any conflict between the federal and state law would implicate the Supremacy Clause which states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." U.S. Constitution, Article VI, cl. 2. Under the Supremacy Clause, the Supreme Court has long recognized that state laws that conflict with federal law are "without effect." *Maryland v. Louisiana*, 451 U.S. 725 (1981). Because this issue may come before me if confirmed, it would be inappropriate to comment on the relationship between the state and federal statutes or how I would decide such an issue. If confirmed as a judge and were this issue to come before the court, I would review the

relevant Supreme Court precedent and any applicable Tenth Circuit precedent and faithfully apply that legal authority.

11. In your response to Question 9, I asked what the concept of separation of powers means for the federal courts. In response, you stated that "[t]he separation of powers limits each branch of government to its appropriate role." Please take this opportunity to reconsider the question, and provide a thoughtful answer regarding what you believe is the "appropriate role" for the federal courts in our system of government.

Response: Separation of powers in the United States Constitution is a foundational concept that power should not be concentrated in one branch of government and should be qualified by checks and balances within the three branches of government. Within this framework the appropriate role of the federal courts is to interpret the law. The federal courts "check" that the legislative and executive branches of government are not exceeding their authority under the Constitution. The role of the federal courts within this framework is to also "balance" or use its constitutional authority to limit the power of the other two branches when they exceed constitutional authority. The federal courts depend on the executive branch because the judiciary has "neither FORCE nor WILL but merely judgment" and rely on the executive branch to enforce its judgments. The Federalist No. 78, p. 394 (G. Willis ed. 1982)(A. Hamilton). The role of the federal judiciary is to serve "as the bulwar[k] of a limited constitution against legislative encroachments." The Federalist No. 78, p. 526 (J. Cooke ed. 1961)(A. Hamilton). That role of the federal courts is further developed in Marbury v. Madison, 5 U.S. 137, 180 (1803), where Justice Marshall held that the Constitution was the "supreme law of the land" and that "a law repugnant to the constitution is void," thereby establishing the Supreme Court's power of judicial review.

12. In Question 10, I asked you what factors you would consider when determining whether to strike down an act of Congress as unconstitutional. You did not answer. Please take this opportunity to answer the question.

Response: If confirmed as a circuit court judge I would start with the presumption that laws enacted by Congress are constitutional. If Congress passes a law that is inconsistent with individual rights secured to the American people under the Constitution, such as rights secured in the Bill of Rights, it is appropriate for a judge to determine that the law as applied in the case before the court is unconstitutional, or to strike down the law as unconstitutional. Similarly, if Congress passes a law that exceeds its enumerated powers or impermissibly encroaches on state sovereignty, then it is appropriate for a judge to declare the law unconstitutional. The Supreme Court has used different factors in reviewing these different types of constitutional challenges. If confirmed as a circuit court judge I would review the Supreme Court precedent that applied to the type of review presented in the case and faithfully apply that precedent.

13. In response to Question 2 in the Additional Questions for the Record, pertaining to your handling of the legal actions relating to the prosecution of Planned

Parenthood, you stated that you were unaware of Judge Anderson's determination that Planned Parenthood's records appeared to have been manufactured in violation of Kansas criminal law. Please explain why you were unaware of this important finding by Judge Anderson relating to a recent investigation by the Attorney General's Office.

Response: I became Attorney General on January 30, 2008. More than one-half a year before I became Attorney General, the Kansas Attorney General's Office had closed its investigation of Planned Parenthood and cleared it of criminal charges in regard to the records referenced in this question. When I became Attorney General I did not re-review any previously closed cases or engage in a review of the reasons why any cases in the office had been previously closed or whether the office had correctly or incorrectly completed its work prior to my tenure. In the mandamus case against Judge Anderson, previously filed by Attorney General Morrison in July of 2007, the same Assistant Attorneys General who handled the case prior to my tenure continued to do so. As Attorney General I was responsible for the work of all the Assistant Attorneys General in the office but I was not involved in reviewing the documents in the case or drafting the motion and show cause response filed with the Kansas Supreme Court. I did approve the documents filed by my office with the Kansas Supreme Court. These documents do not discuss the statement by Judge Anderson.

14. In Question 4 in the Additional Questions for the Record, pertaining to Morrison v. Anderson, I asked you if it was common practice for the Attorney General to interfere with subpoenas and requests for evidence by local prosecutors, and if so, to provide some examples of other cases where the Attorney General has done so. You did not answer this question. Please take this opportunity to do so.

Response: No. I am not aware of any such examples during my time as Attorney General.

1412

Responses of Stephen N. Six Nominee to be United States Circuit Judge for the Tenth Circuit to the Written Questions of Senator Tom Coburn, M.D.

1. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: I do not agree with the idea that the Constitution is constantly evolving as society interprets it. While societal circumstances can change, the Constitution is only changed through amendments as set forth in Article V.

2. Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?

Response: No.

3. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?

Response: No.

4. The U.S. Supreme Court held in District of Columbia v. Heller, 554 U.S. 570 (2008), that the Second Amendment of the United States Constitution "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." As Justice Scalia's opinion in Heller pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Leaving aside the McDonald v. Chicago decision, do you personally believe the right to bear arms is a fundamental right?

Response: The Second Amendment establishes that right and the Supreme Court affirmed that right.

a. Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.

Response: The Supreme Court stated in *McDonald v. City of Chicago*, that certain rights, including most of the rights guaranteed in the Bill of Rights, have been determined by the Court to be "fundamental" to our country's "scheme of ordered liberty" or "deeply rooted in the Nation's history and tradition," and have been deemed to apply against the States.

b. Is it your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.

Response: Yes. Please see response to 4(a).

c. The Heller Court further stated that "it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right." Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.

Response: Yes. In *Heller*, the Supreme Court determined "the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right." If confirmed, I would apply the precedent in *Heller* as well as any other applicable cases.

5. Some have criticized the Supreme Court's decision in Heller saying it "discovered a constitutional right to own guns that the Court had not previously noticed in 220 years." Do you believe that Heller "discovered" a new right, or merely applied a fair reading of the plain text of the Second Amendment?

Response: The Supreme Court's decision in *Heller* was based on the text of the Second Amendment and if confirmed I would apply the precedent in *Heller* as well as any other applicable Supreme Court cases.

a. Similarly, during his State of the Union address, the President said the Supreme Court's decision in Citizens United v. FEC, 558 U.S. ____ (2010), "reversed a century of law" and others have stated that it abandoned "100 years of precedent." Do you agree that the Court reversed a century of law or 100 years of precedent in the Citizens United decision? Please explain why or why not.

Response: The holding in *Citizens United* was based on the First Amendment and the Supreme Court's many cases applying the First Amendment some of which are described by the court as conflicting lines of precedent. If confirmed I would apply the *Citizens United* precedent as well as any other applicable Supreme Court precedent.

6. What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?

Response: As the Supreme Court discussed in *McDonald v. City of Chicago* and in *Heller* some limitations remain, such as possession of a firearm by felons or the mentally ill or "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings."

a. Is the Second Amendment limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?

Response: The Supreme Court in *Heller* and *McDonald* identified certain types of laws that would not infringe on the Second Amendment, however, the Court did not define the extent of Second Amendment rights under all scenarios. If confirmed, I would apply the Supreme Court's precedents in *Heller* and *McDonald*.

7. In Roper v. Simmons, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?

Response: If confirmed, I would apply the binding precedent of the Supreme Court in *Roper* as well as any other applicable precedent.

a. Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"

Response: If confirmed as a circuit court judge and faced with an issue involving the Eighth Amendment and capital punishment, I would be required to follow the Supreme Court precedents and the analytical framework in *Roper v. Simmons* on what constitutes cruel and unusual punishment.

b. How would you determine what the evolving standards of decency are?

Response: I would follow the guidance of the Supreme Court in *Roper* and any other applicable binding precedents.

c. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: The Supreme Court has determined the death penalty is constitutional except in limited circumstances. Given this binding precedent, I do not believe a lower court judge could decide otherwise.

d. What factors do you believe would be relevant to the judge's analysis?

Response: Given that a lower court judge could not decide that the death penalty was unconstitutional in all circumstances, I do not believe such analysis would be appropriate.

e. When determining what the "evolving standards of decency" are, justices have looked to different standards. Some justices have justified their

decision by looking to the laws of various American states, ¹ in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. ² Do you believe either standard has merit when interpreting the text of the Constitution?

Response: In interpreting the Constitution I would look to domestic sources of law and legal authorities unless instructed otherwise by the Supreme Court. In *Roper* the Court held that state laws and foreign laws are relevant but not controlling. I would not consider state law or foreign law in Constitutional interpretation unless binding Supreme Court precedent required it.

If so, do you believe one standard more meritorious than the other?
 Please explain why or why not.

Response: Please see response to 7(e).

8. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?

Response: In interpreting the United States Constitution I would use domestic legal sources, unless instructed to do otherwise by binding Supreme Court precedent.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: I would not look to the law of foreign counties in evaluating legal and constitutional problems unless directed to do so by the Supreme Court.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: If confirmed, I would not use foreign laws when interpreting the Constitution unless directed to do so by the Supreme Court.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: I believe the United States Constitution and laws should be interpreted with domestic legal authorities not foreign sources.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: If confirmed, I would not consider foreign law in interpreting the Constitution unless directed to do so by binding Supreme Court precedent.

Roper v. Simmons, 543 U.S. 551, 564-65.

² Graham v. Florida, 130 S.Ct. 2011, 2033-34.

SUBMISSIONS FOR THE RECORD

Thank you, Madam Chair and members of the Senate Judiciary Committee for the opportunity to introduce the Honorable Assistant Secretary Wilma Lewis, President Obama's nominee to serve as the next District Court Judge of the U.S. Virgin Islands.

As the daughter of the first Native Virgin Islands judge of our District Court, it is an honor to introduce an outstanding woman and public servant who with your confirmation would create another judicial milestone as she would become the first woman to serve as a federal judge in the District Court of the U.S. Virgin Islands.

Assistant Secretary Lewis would bring an extensive, varied and broad wealth of experience from both the public and private sector to the District Court of the U.S. Virgin Islands. We are so very proud of her record of distinguished service and note that any number of other federal judicial districts would have vied to have her bring her level of expertise to them as there are also many who hold her in the highest regard and who would have wanted to have the honor and privilege that I have to introduce her to you today!

I know her as the devoted daughter of two parents who themselves gave a collective 67 years of service to the Federal government: her father, Walter Lewis, in the US Postal Service and her mother, Juta Lewis, in what was then the U.S. Customs Service.

We are both members of a church that played an important role in bringing equity and justice to the enslaved Africans they came to live among back in the early 1700s. Wilma continues to actively serve our Moravian Congregations here in Washington, in Pennsylvania and at home.

I know that you have her outstanding resume, but she has served the District of Columbia and our Nation in positions of high significance and in some of the most demanding positions in local and federal government. Her tenures in those offices are of immense pride to the people of the Virgin Islands and I would not be able to go home if I did not at least mention some of the more important ones as I present her to you today.

In 2009, President Obama and Interior Department Secretary Ken Salazaar called upon Attorney Lewis's vast expertise and asked her to serve as the Asst. Secretary for Lands and Minerals Management at one of the most challenging times for that agency. She previously served as Interior's Inspector General and earlier as Associate Solicitor in its General Law Division.

Assistant Secretary Lewis served the U.S. Department of Justice as the United States Attorney for the District of Columbia as well as on several key boards, committees and commissions, including the Judicial Nomination Commission, the Advisory Committee to the Standing Committee on Fairness and Access of the DC Courts, and the Advisory Committee on Local Rules of the U.S. District Court for the District of Columbia.

Atty. Lewis has also had significant experience in the private sector, working as a Partner at Crowell & Moring, LLP and Managing Associate General Counsel at Freddie MAC and before that as an Associate at Steptoe & Johnson.

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Madam Chair and members, throughout her life, Wilma A. Lewis has distinguished herself at every turn - in college, in law school and in the coveted legal positions she has held and executed with honor, distinction and excellence.

She was valedictorian of her All Saints Cathedral High School in 1974, graduated with honors from Swarthmore in political science in 1978 and from Harvard Law School in 1981. She was featured in the 2003 Harvard Law Bulletin as among the 50 female graduates who used their legal education to "take them to extraordinary places." She has been recognized by the 24th Legislature of the US Virgin Islands in 2002 an has won recognition as 2001 Janet Reno Torchbearer Award, Charlotte E. Ray Award for excellence as a lawyer, Dr. Martin Luther King Jr. Dream Keepers Award and Bethune Dubois Institute Award for her work at the Department of Justice, just to name a few.

Although the nominee has spent most of her professional life on the United States mainland, she has maintained close and continuous contact with her home through the church and several community organizations as well as through her ties to family and friends. The Virgin islands Bar unanimously voted her as the most qualified and recommended her highly for this position.

We are asking that this Body in confirming this outstanding individual give her the opportunity to do what has always been her dream - to use all of the experience and skill she has accumulated over the years of service to serve her beloved home!

Charles E. Croom, Lt Gen (USAF, Retired) 6823 Stockwell Manor Drive Falls Church, VA 22043

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

The Honorable Charles E. Grassley Ranking Member Committee on the Judiciary United States Scnate 152 Dirksen Senate Office Building Washington, D.C. 20510

Dear Mr. Chairman and Ranking Member Grassley:

I am pleased to write a letter of recommendation for MG Marilyn Quagliotti (Army, retired) for the position of Deputy Director for Supply Reduction in the Office on ONDCP. MG Quagliotti reported to me as the Deputy Director, Defense Information Systems Agency from July 2005 to June 2007. She managed and directed the daily operations of a Defense Agency comprised of about 6,500 government employees and 10,000 contractors with an annual budget of eight billion dollars.

MG Quagliotti is a charismatic, high energy, no nonsense leader known to quickly identify the essence of an issue or problem and build the right team and skill set to address and resolve. She brings with her a practiced history of program management skills and acquisition savvy. She orchestrated many critical programs from upgrading the White House Situational Room to significantly reducing the costs to lease commercial satellites for the Department of Defense. She knows how to lead during intense crisis moments as demonstrated by her management of a significant cable cut restoral process impacting all undersea cables that provided primary communications with the Iraq theater. She has a unique ability to take a complex problem and unpeel the issues back to doable, solvable parts. She has strong management skills and exercised that daily orchestration of the strategic work efforts of over thirty Senior Executive Service members and three other flag officers. I trusted General Quagliotti with the most difficult tasks and she succeeded with innovation, energy and leadership never forgetting the customer and mission she was supporting.

I know of no one more dedicated to government service and our nation. Her core values of integrity, excellence in all she does and service before self are unquestionable. I strongly recommend General Quagliotti for this senior position in Government that requires leadership to deliver results.

Very Respectfully,

Charles E. Croom, Lt Gen (USAF, retired)

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DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK PRESIDENT-ELECT
JANET DIFFORE
WESTCHESTER COUNTY PRESIDENT DEREK P. CHAMPAGNE FRANKLIN COUNTY 超三型 April 27, 2011 rd VICE PRESIDENT THOMAS & MORAN LIVINGSTON COUNTY The Honorable Patrick J. Leahy SECRETARY

ADA EDWARD D. SASLAY

QUEENS COUNTY Chairman, Senate Judiciary Committee TREASURER
ADA REBECCA WINER
NASSAU COUNTY 224 Dirksen Senate Office Building Washington, DC 20510 BOARD OF DIRECTORS CHAIRPERSON
*KATHLEEN HOGAN
WARREN COUNTY The Honorable Charles E. Grassley Ranking Member, Senate Judiciary Committee *ROBERT T. JOHNSON BRONX COUNTY 224 Dirksen Senate Office Building Washington, DC 20510 GERALD F. MOLLEN BROOME COUNTY JON E. BUDELMANN CAYUGA COUNTY Dear Chairman Leahy and Senator Grassley: ANDREW J. WYLIE
CUNTON COUNTY On behalf of the District Attorneys Association of the State of New York, I FRANK A. SEDITA ERIE COUNTY write to express our enthusiastic support for the nomination of Michael C. Green for the position of United States District Court Judge for the Western District of New York, KRISTY SPRAGUE ESSEX COUNTY LAWRENCE FRIEDMAN GENESEL COUNTY By way of background, DAASNY was formed in 1909 as a bipartisan CINDY F. INTSCHERT JEFFERSON COUNTY organization to promote sound law enforcement policies in the State of New York. It consists of the 62 elected district attorneys in the entire state, many of their assistants, *CHARLES J. HYNES KINGS COUNTY and the state Attorney General. About 40 of our member offices are located in rural CYRUS R. YANCE, JR. NEW YORK COUNTY counties, and have fewer than 10 lawyers to work with the police to prosecute all

crimes within their jurisdictions.

SCOTT D. McNAMARA ONE DA COUNTY

*WILLIAM J. FITZPATRICK ONDNDAGA COUNTY

R. MICHAEL TANTILLO ONTARIO COUNTY

*FRANCIS B. PRHILIPS II

*RICHARD A. BROWN QUEENS COUNTY

RICHARD J. McNALLY, JR. RENSSELAER COUNTY

DANIEL M. DONOYAN, JR. RICHMOND COUNTY

NICOLE M. DUVĖ ST LAWRENCE COUNTY

*JAMES A. MURPHY, III. SARATOGA COUNTY

*ROBERT M. CARNEY SCHENECTADY COUNTY *JOHN C. TUNNEY STEUBEN COUNTY THOMAS J. SPOTA SUPPOLIK COUNTY JAMES FARRELL SULLIVAN COUNTY RICHARD M. HEALY WAYNE COUNTY

PAST DAASNY PRESIDENT.

THOMAS P. ZUGIBE ROCKLAND COUNTY

The members of DAASNY, Republicans and Democrats, have come to know Mr. Green well since his election as District Attorney of Monroe County in 2003. In that capacity, he has tirelessly upheld the ideals of strong law enforcement and has worked with DAASNY on numerous projects that are important to its law enforcement mission. Most notably, Mr. Green served as the only prosecutor on New York's Sentencing Reform Commission and advocated tirelessly on behalf of the Association for fair but tough drug laws that would hold accountable and punish the drug dealers who are ruining our communities and increase treatment options for non-violent drug addicts. In the face of stiff opposition from a majority of the commission members, District Attorney Green consistently advocated for laws that would continue to allow prosecutors to have a meaningful role in ensuring that convicted drug dealers are appropriately punished.

355 WEST MAIN STREET, MALONE, NY 12953 Tel., (518) 481-1544 FAX (518) 481-1545 E-MAIL: DCHAMPAG@CO.FRANKLIN.NY.US

April 27, 2011 Page 2

Our Association's respect for District Attorney Green and his work is best demonstrated by the fact that he was elected Vice President of the Association by his fellow District Attorneys, and was scheduled to take over as President of the Association this July. This has been delayed a year because of his pending nomination.

In sum, we have very much appreciated Mr. Green's commitment to justice and the battle to keep our communities safe. While we would hate to lose him as a member of our association, we are confident that he would bring the same work ethic and commitment to the fair administration of justice as a District Court Judge.

Thank you for your consideration and please do not hesitate to contact me if I can provide you with any further information that would assist with this process.

Sincerely,

Derek Champagne

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President

Senator Kirsten E. Gillibrand Statement for the Record May 24, 2011

Mr. Chairman, I am pleased to offer my strong support of the nomination of Michael Charles Green to the United States District Court of Western New York. I commend President Obama for the superb judgment that he has shown in making this nomination.

Mr. Green has spent the last 24 years as a dedicated public servant to the people of Rochester and Monroe County. His service in the District Attorney's office as both an Assistant District Attorney and now as District Attorney has been with great distinction. He has shown himself to be a fair and efficient prosecutor, while expressing real compassion and understanding for victims and their families. Through both of his elections to the office of District Attorney, Mr. Green has gained support of the community from across the political spectrum, and his professional reputation as a fair and independent prosecutor has served the citizens of Western New York well.

Under Mr. Green's leadership, the District Attorney's office is combating violent crime and homicides by targeting armed violent felons, gang members, and those illegally carrying guns. He has been effective at bringing law enforcement together to attack crime through his leadership role in efforts such as Operation Impact, Ceasefire, and Project Exile. Side-by-side with efforts to prosecute violent offenders, Mr. Green is also working to create more opportunities for our inner city youth in order to reduce crime numbers and improve his community. He has devoted countless hours to organizations like the Boys and Girls Club of Rochester where, as a board member, he saw first-hand the enormous need for more resources. To address that need, he implemented Project Step Up, using money seized from drug dealers to fund an educational and recreational program for teens. He truly leads by example, and in 2007, he received the Hallauer Award from the Rochester Police Department's Rosewood Club for his "extraordinary contributions to the criminal justice system and the youth of our community."

As a prosecutor, his compassion for victims cannot be overstated. Early in his career as an Assistant District Attorney, Mr. Green was prosecuting a murder case when he first met the victim's mother, Audrey Smith. Although it was a rocky start, not only did Mike Green successfully prosecute that case, but he went on to form a relationship with Audrey that has lasted to this day. Together they helped create an organization called Families and Friends of Murdered Children and Victims of Violence. This group offers support and resources for families and victims affected by crimes. Although, it has recently merged with Rise Up Rochester, it continues to be an asset for the community and is highly respected by local law enforcement. Through his work with Families and Friends, Mr. Green was one of the first to be honored with the Audrey Smith Award.

And on a personal note, one member of my staff has known Mike Green for almost 15 years. As a swim coach for his two young daughters, Tori and Meghan, my Rochester Regional Director, Sarah Clark, has seen firsthand his commitment and dedication to both his professional life and his family.

As District Attorney, Mike Green has shown himself to be an outstanding prosecutor and effective advocate for victims' families. He has demonstrated fairness, effectiveness and exemplary professionalism throughout his tenure as a prosecutor. I am confident that President Obama has made an excellent choice in this nominee, and it is without reservation that I support his confirmation to the U.S. District Court for the Western District of New York.

1427

Statement of Senator Chuck Grassley Before the Committee on the Judiciary

On the Nominations of:

Steve Six, to be United States Circuit Judge for the Tenth Circuit

 ${\it Marina~Garcia~Marmolejo, to~be~United~States~District~Judge~for~the~Southern~District~of~Texas}$

 ${\it Michael C. Green, to be United States District Judge for the Western \, District of \, New \, York}$

Wilma Antoinette Lewis, to be Judge for the District Court of the Virgin Islands

Major General Marilyn A. Quagliotti, USA (Ret.), to be Deputy Director for Supply Reduction, Office of National Drug Control Policy

May 24, 2011

Madam Chairman:

I extend my welcome to the nominees appearing before us today. I also welcome their families and friends. I am eager to hear their testimony and ask my questions. I expect the nominees will fully answer my questions. Too often, nominees appear before us and fail to give meaningful responses. Unfortunately, a well-worn response to a

question of substance that we hear too frequently is "I will follow the law, if confirmed."

That type of response, which sounds coached, even robotic at times, doesn't really get us very far with understanding the competence, integrity and temperament of a particular nominee. It certainly gives no insight into the thought process, legal reasoning skills, or general judicial philosophy of a nominee.

I will insert my full statement into the record.

Stephen Six is nominated to be United States Circuit Judge for the Tenth Circuit. Mr. Six received his B.A. from Carleton College in 1988 and his J.D. from the University of Kansas School of Law in 1993. Following law school, he clerked for the Honorable Deanell R. Tacha, United States Circuit Judge for the Tenth Circuit. I note that if confirmed, Mr. Six will fill the vacancy created by the retirement of Judge Tacha.

Mr. Six began his legal career as a litigation associate for Shamberg, Johnson & Bergman. There he primarily represented individuals and businesses in environmental, products liability, business torts, and personal injury cases. In 2000, he was promoted to partner and remained in that position until being appointed a Kansas District Court Judge in 2005.

From 2005 to 2008, Mr. Six served as a District Court Judge in the State of Kansas' Seventh Judicial District where he presided over criminal and civil trials.

In 2008, he was appointed Attorney General. As Kansas Attorney General, he oversaw criminal investigations, wrote legal opinions, argued in appellate court, and prosecuted criminal matters. He ran unsuccessfully for reelection in 2010. Since 2011, Mr. Six has been a partner at Stevens & Brand where he represents a variety of businesses, counseling these clients on employment matters and business issues. The ABA Standing Committee on the

Federal Judiciary gave him a unanimous rating of Well Qualified."

Michael Charles Green is nominated to be United States
District Judge for the Western District of New York. He
received his B.S. degree in 1983 for Le Moyne College and his
J.D. in 1986 from Western New England College, School of
Law. Mr. Green began his legal career as a law clerk with
Morris and Morris and was soon brought on as a full-time
associate. He worked for attorney James E. Morris, Esq., on
real estate closings and plaintiffs' personal injury claims. He
remained with the firm just less than one year.

In March 1987, he joined the Monroe County District Attorney's Office as an Assistant District Attorney. He began prosecuting misdemeanor cases in local criminal courts and then served as a trial attorney in the felony DWI, County Court, and Major Felony Bureaus, prosecuting and trying felony cases. In 1992, he served as Chief of the DWI Bureau, supervising attorneys prosecuting felony DWI cases and

personally prosecuting DWI-related assault and homicide cases. From 1993 to 2000, Mr. Green was the Deputy Chief of the Major Felony Bureau and the Capital Crimes Prosecutor. He assisted with supervisory duties of the Major Felony Bureau and prosecuted capital, homicide, and high-profile violent felony cases.

In 2001, Mr. Green became the First Assistant District
Attorney of Monroe County. His responsibilities included
supervising homicide prosecutions, assisting the District
Attorney with administration of the office, and prosecuting
homicide and high-profile violent felony cases.

In 2004, Mr. Green was elected to a four-year term as District Attorney of Monroe County. He was re-elected in 2008. A majority of the ABA Standing Committee on the Federal Judiciary rated Mr. Green as "Qualified"; a minority rated him "Not Qualified."

Marina Garcia Marmolejo is nominated to be United States District Judge for the Southern District of Texas. She received her B.A. from the University of Incarnate Word in 1992, her M.A. from St. Mary's University Graduate School in 1996, and her J.D., *cum laude*, from St. Mary's School of Law in 1996. After graduating from law school, Ms. Marmolejo joined the Federal Public Defender's Office for the Western District of Texas as an Assistant Public Defender where she remained until 1998. She then moved to the Federal Public Defender's Office for the Southern District of Texas where she again served as an Assistant Public Defender until 1999. In these positions, Ms. Marmolejo represented indigent clients charged with federal felonies and misdemeanors.

In 1999, Ms. Marmolejo worked briefly for the law offices of Jesus M. Dominguez before becoming an Assistant United States Attorney (AUSA) in the U.S. Attorney's Office for the Southern District of Texas. As an AUSA, Ms.

Marmolejo was assigned to the Organized Crime Drug Enforcement Task Force (OCDETF) where she handled

complex narcotics cases and money laundering investigations. Ms. Marmolejo was also recruited by the U.S. Department of Justice on several occasions to teach trial advocacy skills to foreign prosecutors and agents in Columbia and the Dominican Republic.

Ms. Marmolejo transitioned into private practice in 2007, joining Thompson & Knight LLP, a white collar defense firm, as Of Counsel. In 2009, she joined Diamond McCarthy LLP as Of Counsel and became a partner later that year. She is currently employed as a partner with Reid Davis LLP. She describes her current practice as focusing on complex commercial cases, frequently involving the investigation and prosecution of civil RICO claims on behalf of foreign sovereigns impacted by illegal smuggling of goods by multinational companies engaged in money laundering activities. Ms. Marmolejo has received a unanimous rating from the ABA Standing Committee on the Federal Judiciary as "Qualified."

Wilma Antoinette Lewis is nominated to be Judge for the District Court of the Virgin Islands for a term of ten years. Wilma Lewis received her B.A. from Swarthmore in 1978 and her J.D. from Harvard Law School in 1981. Following law school, Ms. Lewis worked as an associate at the Washington law firm of Steptoe & Johnson. She focused on legal research, drafting of legal documents, and managed small insurance cases while at the firm. In 1986, she departed private practice to serve as an Assistant U.S. Attorney for the U.S. Attorney's Office in Washington, D.C., where she focused on civil matters.

After working as a federal prosecutor, Ms. Lewis moved to the Department of the Interior in 1993, where she first served as Associate Solicitor. In 1995, she was confirmed by the United States Senate, and appointed by President Clinton, to be Inspector General of the Department of Interior. In 1998, after Senate confirmation, President Clinton appointed Ms. Lewis to be United States Attorney for the District of Columbia. She served in that capacity for

three years. In 2001, she returned to private practice, joining Crowell & Moring as a partner handling both civil and criminal matters.

In 2007, Ms. Lewis joined the Federal Home Loan Corporation ("Freddie Mac") as managing associate general counsel in charge of litigation. In 2009, after Senate confirmation, President Obama appointed Ms. Lewis to be Assistant Secretary for Land and Minerals Management at the Department of Interior. She currently holds that position. The ABA Standing Committee on the Federal Judiciary gave Ms. Lewis a unanimous rating of "Well Qualified."

Marilyn Ann Quagliotti is nominated to be Deputy Director for Supply Reduction, Office of National Drug Control Policy. She received her B.S. from Louisiana State University in 1974 and an M.S. from National War College in 1994. She began her long career in the United States Army in 1975 as Signal Officer. She continued to climb the ranks and served as an

Operations Officer, Commander Aide-de-Camp to Commanding General, a Platoon Leader, Commander, and finally Vice Director of the Defense Information Systems Agency. The Defense Information Systems Agency is responsible for building and operating joint command, control, communications and computer capabilities within the Department of Defense's transformation from platform to network operations. She received an honorable discharge from the U.S. Army in 2007, retiring as a Major General.

As the Commander 13th Signal Battalion, 1st Cavalry Division, Ft. Hood, Texas, she provided all communications support to the entire combat division (combat forces, intelligence, engineers, air defense artillery, etc.). As the Commander 106th Signal Brigade, Ft. Clayton, Panama, she was responsible for providing command, control, and communications support to the joint headquarters of Southern Command (SOUTHCOM) in Panama and all Army elements in the country. As Commander 5th Signal Command, Mannheim, Germany, she was responsible for C4

support to all joint headquarters in Europe as well as Army forces in the European theater and forces deployed from theater. She provided direct support to Central Command during the initial phases of Afghanistan operations.

She was the first woman to command a battalion in a Combat Division; the first woman to be promoted to General Officer in the U.S Army Signal Corps; the first woman to be both the Operations Director and Vice Director of a major Defense Agency (DISA); and the first woman to be a General Officer Commander in Europe.

From 2007 to 2010, Maj. Gen. Quagliotti worked at Deloitte Consulting. She served as a Senior Manager from 2007 to 2009, and then as an Independent Contractor from 2009 to 2010. Since 2009, she has also acted as an independent consultant. Maj. Gen. Quagliotti joined the Durango Group as an Associate in June 2010, a post she holds to this day.

Douglas W. Keeton 9800 Darcy Forest Drive Silver Spring, MD 20910

21 March 2011

Senator Patrick J. Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

Senator Charles E. Grassley Ranking Member Committee on the Judiciary United States Senate 152 Dirksen Senate Office Building Washington, D.C. 20510

Dear Mr. Chairman and Ranking Member Grassley:

I am writing to offer my wholehearted support for Major General Marilyn A. Quagliotti, USA, Retired, for the position of Deputy Director for Supply Reduction, Office of National Drug Control Policy.

I have known General Quagliotti for twenty years, first as a subordinate, a junior military officer, under her battalion command at Fort Hood, Texas and in recent years in a friendship context. While she was my commanding officer I worked directly for her, took her direction and executed the mission. One would see this relationship as a simple superior to subordinate relationship. But, here is the significant difference she instilled upon me; she made me understand that a true leader actually works for their subordinates. Her leadership trait of supporting her subordinates cultivated high moral. She provided the tools that promoted personal growth, team success and professional achievement! Though the years have passed since I had the privilege to work with her, time has not diminished the profound impact her leadership had on my professional and personal life.

Marilyn Quagliotti's executive leadership and operational knowledge of international environments, interagency polices, coupled with her ability to garner collaboration for cooperative interagency efforts has been demonstrated many times throughout her successful career – both military and civilian. She has the common-sense approach and drive needed to make a difference in reducing the supply of drugs on the streets of our Great Nation. I cannot stress enough my confidence in Marilyn Quagliotti.

Sincerely,

Douglas Vy. Keeton Small Business Owner/

USA Veteran

Statement Of Senator Patrick Leahy (D-Vt.) Chairman, Senate Judiciary Committee Hearing On Judicial Nominations May 24, 2011

Today we will hear from three of President Obama's highly qualified nominees for lifetime appointments to the Federal bench. The Committee welcomes Steve Six of Kansas, nominated to the Tenth Circuit, Marina Garcia Marmolejo, nominated to fill a judicial emergency vacancy in the Southern District of Texas, and Michael Green, nominated to fill a judicial emergency vacancy in the Western District of New York. We also welcome Wilma Lewis, who has been nominated to a 10-year term on the District Court for the U.S. Virgin Islands, and Major General Marilyn Quagliotti, who has been nominated to be Deputy Director for Supply Reduction at the Office of National Drug Control Policy.

I thank Senator Klobuchar for chairing this important hearing. I also thank our Ranking Member, Senator Grassley, for working with me to schedule the hearing today. I hope that we can continue to take what has been described as "positive action" on these and many other pending judicial and executive nominations, including holding up-or-down votes in the Senate, without further extensive delays.

With judicial vacancies continuing at crisis levels, affecting the ability of courts to provide justice to Americans around the country, we should debate and vote on each of the 14 judicial nominations reported favorably by the Judiciary Committee and pending on the Senate's Executive Calendar. We should be having regular votes on President Obama's highly qualified nominees, instead of the partisan filibusters we have seen since President Obama took office, including last week's disappointing vote to block the Senate from considering the nomination of Professor Goodwin Liu to the Ninth Circuit. A good man with a brilliant legal mind and the kind of character and temperament we want in a Federal judge, Professor Liu deserved better treatment by the Senate.

I hope that Senate Republicans can step back from this partisan path and avoid the misplaced controversies that have hampered our ability to make progress regarding nominations. Before the Senate leaves for the Memorial Day recess, I hope we will be able to consider and confirm many of the judicial nominations currently pending on the Senate Executive Calendar, some of which have been ready for final Senate action for months. With cooperation from both sides of the aisle, we should be able to report favorably another five judicial nominations this week, all of them highly qualified, consensus nominees. With vacancies still totaling almost 90 on Federal courts throughout the country, and with nearly two dozen future vacancies on the horizon, there is no time to delay taking up these nominations. We can take significant steps this week to ensure that the Federal judiciary has the resources it needs to fulfill its constitutional role.

All of the nominations reported by this Committee and pending on the Senate's Executive calendar have been through our Committee's fair and thorough process. We review extensive background material on each nominee. All Senators on the Committee, Democratic and Republican, have the opportunity to ask the nominees questions at a live hearing like the one we are having today. Senators also have the opportunity to ask questions in writing following the

hearing and to meet with the nominees. All of these nominees which the Committee reported to the Senate have a strong commitment to the rule of law and a demonstrated faithfulness to the Constitution. All have the support of their home state Senators, both Republican and Democratic. They should not be delayed for weeks and months needlessly after being so thoroughly and fairly considered by the Judiciary Committee.

I believe the nominees before the Committee today fit the same mold. Steve Six, the nominee to the Tenth Circuit, is currently in private practice and a research scholar with Columbia University Law School's State Attorney General Program. He previously served as the Attorney General for the State of Kansas and as a state court judge in Lawrence Kansas. Senators Roberts and Moran of Kansas have each returned blue slips on the nomination. The American Bar Association's Standing Committee on the Federal Judiciary unanimously rated Attorney General Six well qualified to serve on the Tenth Circuit, its highest possible rating. Attorney General Six's father, Justice Fred Six, served on the Kansas Supreme Court for more than 15 years before retiring in 2005.

Marina Garcia Marmolejo, nominated to fill a judicial emergency vacancy in the Southern District of Texas, has the support of her home state Senators, Senator Hutchison and Senator Cornyn. Ms. Marmolejo has worked in both public service and in private practice. She began her career as an Assistant Federal Public Defender and then served as an Assistant U.S. Attorney before entering private practice. The ABA Standing Committee on the Federal Judiciary unanimously rated Ms. Marmolejo well qualified to serve as a district judge, its highest possible rating.

Michael Green, nominated to fill a judicial emergency vacancy in the Western District of New York, has the strong support of his home state Senators, Senators Schumer and Gillibrand. Mr. Green is a long-time prosecutor in Monroe County, New York, which includes the city of Rochester. As an Assistant District Attorney, Mr. Green served as Chief of the DWI Bureau, Deputy Chief of the Major Felony Bureau, Capital Crimes Prosecutor, and First Assistant District Attorney (2001-2003). Since 2004, Mr. Green has been twice elected the District Attorney for Monroe County. Derek Champagne, President of the District Attorneys Association of the State of New York, wrote to the Committee in support of Mr. Green's nomination on behalf of the 62 elected district attorneys in the state of New York.

Wilma Lewis, the Assistant Secretary for Land and Minerals Management at the U.S. Department of Interior since her confirmation by the Senate by in 2009, is familiar to many of us from her previous position as U.S. Attorney for the District of Columbia. She also previously served during the Clinton administration as the Inspector General of the U.S. Department of Interior. Ms. Lewis was the first African American to serve as Inspector General at the Department of the Interior and the first woman and second African American to serve as U.S. Attorney for the District of Columbia. Ms. Lewis has also worked as a partner in private practice and served as the Chairman of the District of Columbia Board of Elections and Ethics. The ABA Standing Committee on the Federal Judiciary unanimously rated Ms. Lewis well qualified to serve as a district judge its highest possible rating.

Retired Major General Marilyn Ann Quagliotti is the nominee for Deputy Director for Supply Reduction, Office of National Drug Control Policy. General Quagliotti served honorably in the U.S. Army for over 30 years, from 1975 to 2007. In a long and distinguished career, General Quagliotti held several assignments throughout the continental United States, South Korea, Germany and Panama. In Panama, she spent two years as a Brigade Commander where her unit supported interdiction efforts to stop the flow of illegal drugs into the United States, and she advised the Colombian Army on command and control issues related to its efforts to combat illegal drugs. In 2003, General Quagliotti made history becoming the first female signal soldier to pin on the rank of major general.

I welcome the nominees and their friends and families to the hearing today.

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Persona

March 22, 2011

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

The Honorable Charles E. Grassley Ranking Member Committee on the Judiciary United States Senate 152 Dirksen Senate Office Building Washington, D.C. 20510

Dear Mr. Chairman and Ranking Member Grassley:

The purpose of this letter is to whole heartedly endorse the nomination of Major General Marilyn Quagliotti, USA Retired as the Deputy Director for Supply Reduction in the Office of the National Drug Control Policy. Marilyn's brilliant leadership experience as a senior military officer who has traveled extensively and worked to solve complex problems qualifies her for this position. She is enormously talented, has extremely good judgment, and is a person of absolute integrity.

The Deputy Director for Supply Reduction is a key member of ONDCP. The portfolio of this position includes law enforcement activities outside the United States, source country programs to include economic development, activities to control international trafficking and availability of illegal drugs. Her nine years of overseas duty, which included two years in Panama during the time I was the SOUTHCOM Commander, gives her a perspective that is needed to work with our neighbors on drug trafficking issues. As a senior advisor to the Columbian Army, she witnessed firsthand the challenges of a country trying to break free of a debilitating narco-terror threat and build a democracy.

The administration has developed counter narcotics strategies. Strategy documents are only successful if you have good and competent people focused on achieving results. Marilyn commanded military unit five times. Command is a unique title in the military. It carries with it responsibility and accountability for everything the organization does or fails to do. As the Deputy Director for Supply Reduction, she will put this experience to good use. She will certainly collaborate across the government to have a coherent government effort but she will always be focused on achieving results.

Marilyn Quagliotti will be a great asset to our efforts to reduce the illegal drug supply.

Sincerely,

Barry R. McCaffre

General, USA (Retired)



Shawn-Michael Malone Senator



Legislature of the Virgin Islands

P.O. Box 1690 St. Thomas, Virgin Islands 00804 Office: (340)693-3556 / Fax: (340) 693-3642 E-mail: smmalone1@yahoo.com Chairman: Economic Development, Technology & Agriculture Committee

Vice Chairman: Education, Youth & Culture Committee

Member: Finance Committee

Health & Hospitals Committee

Human Services, Recreation &
Sports Committee

May 23, 2011

Honorable Patrick Leahy Chairman U.S. Senate Judiciary Committee 224 Dirkson Senate Office Building 20510 Washington, D.C

Dear Senator Leahy:

With pride I join the people of the United States Virgin Islands in enthusiastically endorsing the nomination of Attorney Wilma A. Lewis, who President Barack Obama has submitted for consideration to be District Court Judge for St. Croix. Her nomination is scheduled to be heard before your committee on May 24, 2011. The notable achievements of this Virgin Islander are very inspiring, as we have witnessed her progress within the federal government in positions of great responsibility, requiring presidential nomination and senate confirmation.

Attorney Lewis comes from a family whose background involves many years of distinguished service to the United States Government in several critical agencies. We have proudly witnessed her tenure as Inspector General of the Department of Interior, United States Attorney for the District of Columbia and her present assignment as Assistant Secretary of the Department of Interior. In each of her roles she served with integrity, competence and distinction.

Attorney Lewis' many achievements in public service are impressive, reflecting a lifelong commitment to personal discipline, education and community service; matched with a commitment to a fair and balanced interpretation of law. President Obama has made an excellent selection in his nomination of Attorney Lewis and it is my hope that the committee, in its wisdom, will vote affirmatively for her confirmation.

Continuing to Make Positive Things Happen!

Letter to Honorable Patrick Leahy May 23, 2011 Page 2

I am confident she will bring her many skills and keen sense of justice, matched with her stellar character to render outstanding service as a District Court Judge for St. Croix.

Senator

29th Legislature of the Virgin Islands

Pc: Honorable Charles "Chuck" Grassley

Ranking Member Senate Judiciary Committee

Attorney Wilma Lewis District Court Judge Nominee

1445

STATEMENT BY SENJCHARLES SCHUMER IN SUPPORT OF MICHAEL C. GREEN, NOMINEE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK May 24, 2011

Mr. Chairman, I am pleased and proud to introduce to the committee today the District Attorney of Monroe County, New York, Michael C. Green. I recommended Mike to be nominated for the federal beneh in the Western District of New York, and I am confident that my colleagues will find him to be as qualified and fair-minded as I know him to be.

Mike is a native of Rochester and has literally dedicated his career to helping his community. Where ever you go in Rochester, you'll find that Mike is beloved and admired, as a lawyer, as a public servant, and as a person.

After graduating from LeMoyne College in Syracuse, New York, and Western New England College of Law in Massachusetts, Mike returned to Rochester, where he worked briefly at the law firm Morris and Morris.

In 1987, he joined the Monroe County District Attorney's office, where he has served Rochester and Monroe County ever since.

Mike has a well-earned reputation for being tough on crime, fair to victims and defendants alike, and the very model of a public servant.

Mike became the first assistance DA in 2001, and he was elected to the office of District Attorney in 2004 and again in 2008. Mike's colleagues throughout the state hold him in the highest regard --he is currently the President-elect of the New York State District Attorneys' Association. He was also chosen as the only District Attorney to serve on the New York State Sentencing Reform Commission, and he currently serves on the New York State Juvenile Justice Task Force, which is charged with developing and designing a strategic blueprint for transforming the juvenile justice system in the state of New York – a particularly challenging job in these tough economic times.

Mike has received too many honors to list in total, but most recently, he received the 2008 Youth Crime Watch of America award for the National Public Official of the Year.

Mike has also broken new and important ground in the New York criminal justice system. He was one of the first prosecutors in the state to use a "John Doe" indictment to obtain a later DNA match for an alleged rapist – who was found in Alabama 10 years later, tried and convicted. He was a leader in putting together local-federal task forces to clean up the streets, put gang members away for long prison sentences, and give many parts of Rochester back to their residents.

Mike embodies every quality that one would want in a federal district court judge – he is an experienced trial lawyer; he is extremely smart and thoughtful; and he understands and appreciates his community.

1 am thrilled that Mike is taking this next step towards becoming a federal judge, and I look forward to his testimony here today.

Thank you.

7016 Maple Tree Lane Springfield, Virginia

March 21, 2011

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510

The Honorable Charles E. Grassley Ranking Member Committee on the Judiciary United States Senate 152 Dirksen Senate Office Building Washington, D.C. 20510

Dear Mr. Chairman and Ranking Member Grassley:

I am honored to recommend Marilyn A, Quagliotti to be the Deputy Director for Supply Reduction in the Office of National Drug Control Policy. As you know Marilyn Quagliotti retired from the United States Army as a Major General. I have personally known her for over 15 years and by reputation far longer. She was highly successful leading commanding Soldiers and large organizations operating in international environments of both Latin America and Europe. Having served as the Acting Commander-in-Chief for United States Southern Command, I fully appreciate the criticality of the position for which she has been nominated and am certain she will serve our Nation extremely well in that capacity.

As Deputy Commander of United States Army South in Panama during 1996 to 1998, I supervised then Colonel Quagliotti where she commanded the theater signal brigade responsible for the emerging signal and communications architecture for Latin American and the Caribbean. With the immature and difficult communications environment throughout the area of operations, she planned and deployed Soldiers in over 50 different operational support missions throughout Central and South America. She was instrumental to the success of critical operations such as the successful peacekeeping Military Observer Mission for Peru and Equator (MOMEP), humanitarian and civic action programs (Nuevos Horizontes), multinational peacekeeping, humanitarian, and counterdrug exercises, and the emerging counter-drug operations primarily in Colombia

but extending through the Andean Ridge and Central America. Marilyn planned, coordinated, and executed the annual communications conference with senior Latin American army officials and subject matter experts. Of note, the commanding general dispatched her to advise the Colombian Army at a critical development time.

Subsequently, while serving as the Deputy Chief of Staff for Operations, Plans, Training, and Strategy for United States Army Europe in 2002, I again worked very closely with General Quagliotti who commanded the 5th Signal Command and was responsible for the signal, IT, and communications architecture for the European Command Area of Operations which spanned from Russia to South Africa. As a Senior Tactical Commander for the Mannheim military community, she worked diligently and effectively with German state and local officials to provide added security to military families immediately following 9/11. She was instrumental in the planning, equipping, and preparation of the European-based V Corps Headquarters, its Signal Brigade, and subordinate units as they prepared to lead the invasion from Kuwait into Iraq. Additionally, General Quagliotti was deeply involved with the planning for the communications architecture for the potential northern option for Iraq as well as the overwatch of the satellite step-site at Landstuhl which became essential to guarantee communications between the United States and Afghanistan.

In every position throughout her military career, General Quagliotti demonstrated superb leadership, often under difficult operational, cultural, and multinational conditions. Her savvy diplomatic and keen communications skills enhanced her acceptance and effectiveness. On both a personal and professional basis, her integrity and ethics are beyond reproach.

I strongly recommend that you and the Committee favorably consider Manlyn A. Quagliotti's nomination to be the Deputy Director for Supply Reduction in the Office of National Drug Control Policy. Upon Senate confirmation, she will apply the same selfless service, values and dedication to her duties that have characterized her performance throughout her military career.

If I can be of further assistance, please do not hesitate to contact me.

Very respectfully,

Gary D. Speer Lieutenant General, U.S. Army (Retired)

1448

A Communication from the Chief Legal Officers Of the Following States:

Arkansas, Colorado, Connecticut, Delaware, Guam, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, and Wyoming

June 8, 2011

The Honorable Patrick Leahy Committee on the Judiciary United States Senate Washington, DC 20510 The Honorable Chuck Grassley Committee on the Judiciary United States Senate Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

It is with pleasure that the under-signed state attorneys general write to express our strong support for the nomination of former Kansas Attorney General Steve Six to the United States Court of Appeals for the Tenth Circuit. We have come to know and respect Mr. Six as the top law enforcement official of Kansas and we firmly believe that he has the knowledge, experience and temperament to serve in this important position.

Mr. Six is particularly well qualified to become a member of the Circuit Court of Appeals. Prior to becoming Kansas Attorney General, Mr. Six served as a state district court judge where he presided over complex civil cases and criminal trials involving major felonies. Managing a caseload of difficult domestic violence and child sexual assault matters, he earned a reputation for recognizing and respecting the role of the victims of crime in his courtroom.

As attorney general, Mr. Six consistently demonstrated his outstanding leadership abilities both within the state of Kansas and nationally. Appointed to the office after a resignation of the sitting attorney general, Mr. Six tackled the difficult challenge of reestablishing the standing of the office, by rebuilding the staff, enhancing morale, and ensuring professionalism. At the same time, he aggressively worked to protect Kansas consumers and seniors from financial scam by creating a first-rate consumer protection division. Taking on fraud in the state Medicaid program, Mr. Six significantly increased Medicaid fraud recoveries, returning to the state and federal government more money in three years than in all the previous years of the Kansas Medicaid Fraud Division combined.

Demonstrating an unrelenting commitment as attorney general to protect the people of Kansas, Mr. Six personally prosecuted two major murder cases. Shortly after taking office, he prosecuted a man charged with first-degree murder for the killing of a Kansas farmer in rural north central Kansas. He later prosecuted a capital murder case involving the brutal rape and murder of a young community college student, obtaining convictions before juries in both cases.

Concerned about dangers faced by children and young people on the Internet, Mr. Six developed Operation Child Shield in the Kansas Attorney General's Office. This program targeted individuals viewing and trading child pornography online. More importantly, it identified and stopped predators seeking to meet children offline for sex. Operation Child Shield successfully led to the arrest, prosecution and conviction of a substantial number of child predators, helping to make Kansas a safer place. Mr. Six also organized and co-hosted a summit on internet safety to share ideas and build cooperation among the Midwestern state attorneys general and major technology companies.

In addition to working with other states to protect consumers and fight online child pornography, former Attorney General Six assumed a leadership role among state and federal officials to combat mortgage fraud. To further these objectives, he actively served on the National Association of Attorneys General (NAAG) State-Federal Task Force on Mortgage Enforcement, the NAAG Consumer Protection Working Group and a federal-state initiative with the National Center for Missing and Exploited Children to crack down on online human trafficking. Mr. Six demonstrated an ability to work closely with his colleagues of both political parties by serving on the NAAG Executive Committee. He was selected by his peers to lead the NAAG Health and Public Safety Committee and serve as Chair of the Midwest Region of Attorneys General.

We note the American Bar Association's Standing Committee on the Judiciary recognized the abilities of Mr. Six with a rating of "Unanimously Well Qualified," and we strongly endorse this view. We have witnessed and benefitted from the skill, professionalism and judgment of Steve Six and we therefore urge the members of the Senate to confirm his nomination by President Obama to the Tenth Circuit Court of Appeals.

ce: Members of the Senate Committee on the Judiciary All U.S. Senators

Sincerely,

John Suthers

Attorney General of Colorado

Dustin McDaniel

Attorney General of Arkansas

Tom Miller

Attorney General of Iowa

George Jepsen

Attorney General of Connecticut

pepk R. Birlen. I

Joseph R. "Beau" Biden, III Attorney General of Delaware

Torfuland

Lawrence G. Wasden Attorney General of Idaho

Jack Conway

Attorney General of Kentucky

Douglas F. Gansler

im Had

Attorney General of Maryland

Jim Hood

Attorney General of Mississippi

Steve Bullock

Attorney General of Montana

Michael A. Delaney

Attorney General of New Hampshire

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Leonardo M. Rapadas Attorney General of Guam

Greg Zoeller

Attorney General of Indiana

James D. "Buddy" Caldwell Attorney General of Louisiana

Marina Coahley

Martha Coakley Attorney General of Massachusetts

Chi Lit

Chris Koster

Attorney General of Missouri

Catherine Cortez Masto Attorney General of Nevada

Gary K. King

Attorney General of New Mexico

Pay Coper

Roy Cooper Attorney General of North Carolina

John Kroger

Attorney General of Oregon

Marty J. Jackley

Attorney General of South Dakota

Mark L. Shurtleff Attorney General of Utah

Rob McKenna

Attorney General of Washington

Wy M Vally M

Wayne K. Stenehjem Attorney General of North Dakota

Peru T. Wilmand

Peter Kilmartin

Attorney General of Rhode Island

Robert E. Cooper, Jr.

Attorney General of Tennessee

William H. Sorrell Attorney General of Vermont

Darrell V. McGraw, Jr.

Attorney General of West Virginia

Gregory A. Phillips

Attorney General of Wyoming

Robert T. Stephan Attorney at Law 12548 W. 123rd Street Overland Park, KS 66213 Phone (913) 685-1953 Fax (913) 685-5976

June 20, 2011

The Honorable Patrick Leahy Chairman Committee on the Judiciary United States Senate Washington, D.C. 20510 The Honorable Chuck Grassley Ranking Member Committee on the Judiciary United States Senate Washington, D.C. 20510

Dear Senators Leahy and Grassley:

I am writing to support the nomination of former Kansas Attorney General Steve Six to the United States Court of Appeals for the Tenth Circuit.

I served as a Republican Kansas Attorney General for sixteen years, from 1979 to 1995. I am well acquainted with the responsibilities of the Attorney General in all areas of law that affect the state and the citizens of Kansas. General Six carried out his responsibilities with distinction and was respected by his peers. He never let politics interfere with his responsibilities.

Before becoming Attorney General Steve Six was a Kansas District Court Judge and prior to becoming a District Court Judge he was an outstanding trial lawyer.

As a Judge of The United States Court of Appeals for the Tenth Circuit, General Six will decide cases based on the law and not personal considerations.

The American Bar Association's Standing Committee on the Judiciary gave a rating of "Unanimously Well Qualified" to General Six and it is justly deserved.

Your thoughtful consideration of his nomination will be appreciated.

Very truly yours,

Robert T. Stephan

1453

PEPPERDINE UNIVERSITY

School of Law

June 24, 2011

OFFICE OF THE DEAN

Senator Patrick J. Leahy, Chairman Senator Chuck Grassley, Ranking Member Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510-6225

Re: Stephen Six-Nominee for the United States Court of Appeals for the Tenth Circuit

Dear Senators Leahy and Grassley:

Your committee has before it the nomination of Stephen Six of Kansas to serve on the United States Court of Appeals for the Tenth Circuit. The position that he would fill is the one I was privileged to hold for 25 years since I was appointed by President Ronald Reagan. I recently retired from the court to assume the responsibilities of Dean at the Pepperdine University School of Law. I have been so gratified and encouraged that President Obama nominated such a highly qualified and thoughtful lawyer to replace me. Stephen Six was my law clerk many years ago and went on to distinguish himself as a practicing lawyer, state district judge, and Attorncy General of Kansas. I can say, with confidence, that Stephen Six possesses the demeanor, intellect, and integrity that characterize the finest judges in the nation. He is open and independent in his judgment. He demonstrates the highest standards and professionalism in everything that

Stephen Six was called to become Attorney General of Kansas at a challenging time for our state. He took to his position a profound dedication to public service and to follow closely the law and the facts of each case—a necessary combination for a good judge. Although he inevitably had to make some difficult decisions, they were motivated by his best judgment of what was good for the state at the time. As a judge, he would no longer be required to factor in the policy calls that are required in the executive branch. Instead, I know from working closely with him in my chambers that he would remain fully committed to limiting his role to interpreting the legal precedent faithfully and constraining himself to the proper role of the judiciary.

Stephen Six is uniquely qualified from his training and his experience to be a judge of great distinction. His confirmation would be a credit to the work of your committee. I support and urge his speedy confirmation.

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Respectfully submitted,

Manell Deanell Reece Tacha

Duane and Kelly Roberts Dean and Professor of Law

Pepperdine University School of Law

Cc: Senator Pat Roberts Senator Jerry Moran

24255 Pacific Coast Highway, Malibu, California 90263-4621 • 310-506-4621 Fax: 310-506-4266

Charles W. Turnbull, Ph. D.

Former Governor, USVI (1999-2007)

May 23, 2011

Honorable Patrick Leahy Chairman U. S. Senate Judiciary Committee 224 Dirkson Senate Office Building 20510 Washington, D.C. 20510

Dear Chairman Leahy,

I am Charles W. Turnbull, former Governor of the United States Virgin Islands. I am happy to write this letter in support of the nomination of Wilma A. Lewis, Esq. to be the next District Court Judge for St. Croix. I have known Attorney Lewis for more than twelve years, beginning during my two terms as Governor. I have found her to be a person of great integrity, good and decent character, honesty and humility, who is also brilliant of mind, hard working, fair and has high ethical standards.

In my honest and professional but humble opinion, she is a superb candidate for the office of judgeship of a U.S. Federal Court. Attorney Lewis comes from a family that has amassed more than one hundred and twenty years in the federal government of the United States. In addition to her excellent academic preparations and her noteworthy legal career in private practice, Attorney Lewis brings excellent public service credentials to this new assignment. She is presently Assistant Secretary of Interior for Land and Mineral Management after serving as Inspector General of the Department of Interior and United States Attorney for the District of Columbia.

In sum, it is my firm belief that she would be an excellent judge who would permit the rule of law to prevail in all instances and would see that justice is served equitably.

Sincerely,

Charles W. Turnbull

Charles W. Turnbull, Ph. D. Former Governor



June 27, 2011

Senator Patrick J. Leahy, Chairman Senator Chuck Grassley, Ranking Member Committee on the Judiciary United States Senate 224 Dirksen Senate Office Building Washington, D.C. 20510-6225

Re: Stephen Six-Nominee for the United States Court of Appeals, Tenth Circuit

Dear Senators Leahy and Grassley:

The undersigned current and former deans of the University of Kansas School of Law support the confirmation of Steve Six to the United States Court of Appeals for the Tenth Circuit. Mr. Six is a life-long Kansan and a graduate of the University of Kansas School of Law. Many of us taught Mr. Six when he was a student and we have followed his legal career here in Kansas. We believe he has the knowledge, experience, temperament and integrity to serve in this important position.

Mr. Six has served with distinction, in the private practice of law, as a state district court judge and as the Attorney General of Kansas. He has experience with criminal, civil and constitutional law. He has significant appellate experience, having argued cases before the Kansas appellate courts and the United States Supreme Court. We also note that the American Bar Association's Standing Committee on the Judiciary gave Mr. Six a rating of "Unanimously Well Qualified" and believe it reflects the experience and integrity he has demonstrated throughout his career.

Selection of judges for the Tenth Circuit should be based on qualifications, experience and judicial temperament and we believe Mr. Six has these qualities. We strongly urge you to support Mr. Six's confirmation and, at the very least, to allow this nominee to have a vote on the Senate floor.

Respectfully submitted,

Stephen W. Mazza Dean and Professor of Law

Office of the Dean

Green Hall | 1535 W. 15th Street | Lawrence, KS 66045-7608 | (785) 864-4531 | Fax (785) 864-5054 | www.law.ku.edu

Signature Page

There K Lagar
James K. Logan
Former Dean
matin W. Page
Martin W. Dickinson
Former Dean Windur Dani
Michael J. Davis
Former Dean
Milabour
Michael H. Hoefich
Former Dean

cc: Senator Pat Roberts Senator Jerry Moran WOMEN IN MILITARY SERVICE FOR AMERICA MEMORIAL FOUNDATION, INC.

hq@womensmemorial.org www.womensmemorial.org www.womensmemorialstore.com



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Dept 560 • Washington, DC 20042-0560

March 25, 2011

The Honorable Patrick J. Leahy Chairman Committee on the Judiciary United States Senate 224 Dirksen Senate Office Buildin Washington, DC. 20510

The Honorable Charles E. Grassley Ranking Member Committee on the Judiciary United States Senate 152 Dirksen Senate Office Building Washington, DC. 20510

Subj: Major General Marilyn Quagliotti Recommendation

Dear Senators Leahy and Grassley,

I strongly recommend Major Marilyn Quagliotti for appointment to the position of Deputy Director for Supply Reduction, Office of National Drug Control Policy.

As President of the Women In Military Service For America Memorial Foundation, I've had the opportunity to work closely with General Quagliotti for the past two years on a project that she envisioned and initiated, titled Women in Leadership. Through interviews with current and past women general and flag officers, she has been capturing their diverse and extensive leadership experiences so they can be compiled in a book and film for sharing with junior women serving today and into the future. The purpose is to help prepare these young leaders for the professional experiences and challenges that lay ahead for them. A renowned leader and mentor, General Quagliotti saw this groundbreaking initiative as her duty to the nation and its future leaders. I join the many generals and admirals she's interviewed in being convinced that the Women in Leadership book and film will fill a long-time void in the professional development of our young military women leaders. There is nothing like it in existence today for military women.

I know General Quagliotti as a proven professional. She's a person of unquestionable integrity, character and patriotism, Almost from day one of her military career, she was cognized for her leadership ability. In a highly technical field, she was the first woman to be advanced from one position of responsibility and leadership to the next in her field. She'll be a formidable asset in a tough arena. America will be well served by her appointment.

Sincerely,

Wilma L. Van Ri Wilma L. Vaugh Brigadier General, USAF, Retired President

1458

Statement of Senator Mark Warner to the Senate Judiciary Committee May 25, 2011

Chairman Leahy and Ranking Member Grassley, thank you for holding a nominations hearing to consider the nomination of Major General Marilyn A. Quagliotti, to serve as the Deputy Director for Supply Reduction in the Office of National Drug Control Policy.

General Quagliotti currently works as a consultant and executive associate with Durango Group, Inc. Prior to this, she honorably served her country for 32 years as a member of the U.S. Army stationed throughout the continental United States, as well as South Korea, Germany and Panama. She has advised the Colombian Army on how to fight illegal drugs, and, while stationed in Panama as a Brigade Commander, she helped support efforts combating the flow of drugs into the United States.

I am proud to say General Quagliotti is a Virginia resident and I look forward to casting my vote in support of hcr nomination and encourage my colleagues on both sides of the aisle to do the same.

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